

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Ma v. Dai*,
2025 BCSC 927

Date: 20250520
Docket: S232870
Registry: Vancouver

Between:

William Kuntang Ma

Plaintiff

And

Guo Qiang Dai, Chang Ying Xu and Hui Han

Defendants

Before: The Honourable Justice Whately

Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

S. Bourns

Counsel for the Defendants:

J. Zeljkovich

Place and Date of Hearing:

Vancouver, B.C.
April 30, 2025

Place and Date of Judgment:

Vancouver, B.C.
May 20, 2025

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Introduction

[1] On November 15, 2024, I issued my reasons for judgement in *Ma v. Dai*, 2024 BCSC 2079. In that decision, I made the following order:

[54] ... I grant the application to declare Mr. Ma a vexatious litigant and order that he be barred from commencing any legal proceedings in this Court without leave of a justice. (the “Order”)

[2] On April 30, 2025 the parties appeared before me with respect to settling the terms of the orders arising from that decision. There were also two contempt applications, and an application regarding the waiver of privilege over a solicitors file. It was not entirely clear which of the above applications were meant to be heard at the April 30, 2025 hearing. Regardless, there was insufficient time for the scope of the matters the parties sought to address.

[3] The only matter I agreed to deal with in the time available was an application to settle the Order arising from my decision to declare Mr. Ma a vexatious litigant. The remainder of the applications are to be rescheduled, either in regular chambers, or by a new request to appear before me. Those applications were not argued and I have not considered them. I will not be addressing them in these reasons.

[4] At the conclusion of the hearing I directed counsel for the applicants (the Defendants in the within action) and the respondent, Mr. Ma (the Plaintiff in the within action) to provide me with a list of existing or pending applications or matters relating to the litigation between the parties. I requested this information to provide me with context in light of the primary disagreement between the parties over the terms of the Order.

[5] I am asked to settle whether my Order barring Mr. Ma from commencing “legal proceedings” without leave was intended to:

- require Mr. Ma to seek leave before filing any new actions, as well as applications or responses to applications in existing actions; or
- require Mr. Ma to seek leave only before commencing a new action.

[6] I received some supplemental information from counsel by way of correspondence to the court dated May 14, 2025.

[7] The root of the disagreement with respect to the terms of the Order arises with respect to a broad or narrow interpretation of the word “proceeding”. In addition, the applicants draw my attention to earlier comments in my reasons, at paras. 38 and 39, which they say illustrates my intent in making my Order:

[38] I therefore find that Mr. Ma’s participation in legal proceedings at the BC Supreme Court must be supervised going forward. Mr. Ma will no longer be able to initiate a legal proceeding in the BCSC without leave of this Court.

[39] This order will not prevent Mr. Ma from continuing his existing proceedings. Nor is it a complete ban on his ability to commence new proceedings to protect his rights. Mr. Ma will be required to seek the leave of this court to file further actions, applications and notices of appeal.

[8] Mr. Ma raises other issues with the form of order proposed by the applicants, but the primary area of contention pertains to when he must seek leave to file.

Position of the Parties

The Applicants/Defendants

[9] The applicants state that it is clear from my reasons and the context of Mr. Ma’s persistent and vexatious conduct of his many actions, that the Order must necessarily extend to all applications, petitions, responses and actions that could be filed by Mr. Ma in new or existing actions.

[10] The applicants state that since I issued my reasons for judgement, Mr. Ma has not only filed an entirely new action without seeking leave, but after the applicants filed an application to have Mr. Ma declared in contempt of my Order, Mr. Ma filed his own retaliatory application seeking (among other things) to find the applicants in contempt. This application contained many of the same allegations in previous claims and applications, including accusations of misconduct against legal counsel and regarding a fraudulent divorce agreement, and mental control of his former wife (a named defendant) by other parties.

[11] The applicants state that my reasons make clear that Mr. Ma’s abuse of the justice system is not limited to the commencement of new matters, but also is reflected in his conduct of his many matters, including the number, content and nature of the applications and other proceedings that he files within each matter.

[12] They state that the term “proceedings’ in my order should be given an expansive interpretation, and points to the definition in the *Supreme Court Act*, R.S.B.C. 1996, c. 443 [SCA] as support for this:

“**proceeding**” includes an action, suit, cause, matter, appeal, petition proceeding or requisition proceeding [...]

The Respondent/Plaintiff

[13] Mr. Ma is currently represented by counsel. This is different counsel from the one who represented Mr. Ma in the hearing to declare him a vexatious litigant. This is also different counsel from Mr. Ma’s counsel earlier this spring, when the new action was filed without leave.

[14] Mr. Ma’s newest counsel says that Mr. Ma is not looking for opportunities to file new actions. He simply wants the ability to meaningfully participate in current proceedings, which includes being able to respond to a “flurry” of applications by the applicants, including the contempt application and an application to declare that Mr. Ma has waived privilege over his communications with previous counsel. Mr. Ma says that the new action was inadvertently filed without leave, as a result of an error by his then counsel. That counsel has apparently admitted to making this error.

[15] In addition, Mr. Ma wishes to file without leave on existing matters relating to the real estate that is the subject of much of the litigation between the parties, including an application to set aside a default order, a foreclosure of contested property in the name of Ms. Han, and a petition by the defendants to remove a charge on a property.

[16] Mr. Ma’s counsel says that much of the “mischief” arises from Mr. Ma’s attempts to conduct his own litigation, and to file claims, documents, responses, and

applications on his own, as opposed to relying on counsel to do so. She says that if the Order requiring leave to file does include applications and responses in existing actions as well as the commencement of new actions, a reasonable “carve out” would be that leave is only required if the application or response is not prepared or filed by counsel.

[17] Mr. Ma states that the definition of proceeding in the SCA does not include the word “application”.

[18] Mr. Ma also says that the defendants should not be able to add “in the name of others” to the Order requiring leave to file actions in his name, as it is vague and difficult to enforce, and may affect the rights of others to file their own litigation as needed.

[19] The parties did not spend much time on this latter point. I understand the applicants’ concerns, as Mr. Ma has initiated proceedings under the names of his family members in the past. However, I agree that adding unnamed “others” to the Order is neither clear nor enforceable and it will not be included in the final terms.

Request for Directions

[20] In addition to providing the requested summary of existing matters for the purposes of assisting with settling the Order — in the May 14, 2025 correspondence to the court — counsel sought “urgent guidance” with respect to how, when or whether various pending matters could proceed, including matters scheduled to be heard on May 13 and May 16, 2025.

[21] With respect, I am not in a position to provide guidance on when, or whether matters that are not part of this action, and more to the point, not properly before me ought to proceed, or should be scheduled.

Settling Orders - Legal Principles

[22] Under Rule 13-1(11) of the *Supreme Civil Rules*, B.C. Reg. 168/2009, the terms of an order are usually settled by the registrar. However, the court “retains an

inherent jurisdiction to settle the terms of its own orders”: *Hosington v. Johnson & Johnson Inc.*, 2020 BCSC 431 at para. 93.

[23] Given the complexity of the litigation that ultimately led to the Order in question, as well as some ambiguity arising from my reasons for judgment and the resulting Order, I find that it is appropriate to settle the terms of the Order here.

[24] The scope of a trial judge’s discretion to vary an order after pronouncement depends on whether a formal order has been entered. So long as the order remains unentered, the judge retains “an unfettered discretion” to re-open the matter. That discretion, however, should be used sparingly.

[25] An order should accurately reflect the court’s decision. It should be consistent with and supported by the reasons: *Ahmed v. Canna Clinic Medicinal Society*, 2019 BCCA 44 at paras. 11-12.

[26] I note that the definition of “proceeding” in other acts includes a “procedure” and “preliminary motion” (see, for example, the *Court Jurisdiction and Proceeding Transfer Act*, S.B.C. 2003, c. 28). In the online Supreme Court of BC glossary, “proceeding” is described as “the whole of the conduct of a legal action, from beginning to end, and all steps in between; may also be used to refer to a specific hearing or trial.”

Conclusion

[27] The notice of application filed by the Defendants sought “an order that Mr. Ma is prohibited from initiating, or directing, any legal proceedings in any British Columbia Court without leave of this Court.”

[28] At para. 39 of my reasons for judgment, I stated that Mr. Ma will be required to seek leave to file further “actions and applications” and at para. 54, I stated that he is barred from commencing any legal proceedings in this Court without leave of a justice.”

[29] I agree with counsel for the applicants that my intent in making the Order was to ensure that Mr. Ma's participation in the justice system is supervised. To be effective this supervision cannot be limited only to the commencement of new actions or petitions, and necessarily includes applications and other proceedings in existing actions.

[30] Counsel for Mr. Ma proposes that Mr. Ma be permitted to proceed unsupervised on all existing matters, and that he should only be required to seek leave when filing new actions. In the alternative, counsel proposes that I allow Mr. Ma to file without leave in existing actions if he has the assistance of counsel.

[31] I agree with counsel for Mr. Ma that some refinement of the terms of the Order proposed by the applicants is in the interests of the parties, and the administration of justice. However, I cannot agree to her first proposal. I also do not agree that the assistance of counsel is a complete answer to Mr. Ma's ongoing conduct in legal proceedings.

[32] As I indicated in my reasons for judgment, periodic representation by counsel has not resulted in the mitigation of Mr. Ma's ill-advised use of BC courts. As mentioned above, Mr. Ma has had the assistance of at least three different counsel since the original hearing of this matter. And yet, in addition to filings made by counsel (including a new action allegedly filed in contravention of the Order requiring leave), Mr. Ma also continues to file his own documents, applications and requests to appear.

[33] Based on the submissions of counsel, a review of my reasons and a consideration of how best to effect the "manifest intention" of my orders, I settle the Order on the following terms:

1. The plaintiff, William Kuntang Ma (Mr. Ma) is declared a vexatious litigant in the Supreme Court of British Columbia.

2. Mr. Ma shall not initiate, commence or file any proceedings in any Registry of the Supreme Court of British Columbia, except with prior leave of the court.
 - a) For clarity, this includes the filing of new actions, suits or petitions, as well as substantive applications, responses, documents, affidavits, appeals, counterclaims, or requisitions, whether in new or existing actions in the BC Supreme Court. This does not include *pro forma* responses that indicate, for example, Mr. Ma's consent to, or that he takes no position on applications filed by other parties. It also does not apply to other purely procedural filings required by the rules that do not contain substantive positions, argument, claims or orders sought by Mr. Ma.
 - b) This Order does not fetter the discretion of a case management judge, should one be appointed to manage the existing or related actions between the parties. Mr. Ma may seek the direction of a case management judge with respect to proceedings or documents he or his counsel wish to file without leave in relation to matters that are under active case management.
3. The notice of civil claim filed by Mr. Ma in this proceeding on April 13, 2023 is struck and the action dismissed.
4. The plaintiff's application filed July 3, 2024 is dismissed.
5. The Defendants are awarded their costs of this application at scale B.

[34] I order no costs in relation to the application to settle the terms of the Order.

"J. Whately J."