

CANADA / JUDGMENT

0766731 B.C. Ltd. v. Hinch

2013 BCSC 655

COURT

Supreme Court of British Columbia

DECIDED

16 April 2013

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2013 BCSC 655 0766731 B.C. Ltd. v. Hinch IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: 0766731 B.C. Ltd. v. Hinch, 2013 BCSC 655 Date: 20130416 Docket: S121891 Registry:

Vancouver Between: 0766731 B.C. Ltd. Plaintiff And Jenny Hinch and Boyd Hinch Defendants

Before: The Honourable Mr. Justice Melnick On appeal from: Supreme Court of B.C. decision of a Master dated January 22, 2013 Reasons for Judgment In Chambers Counsel for the Plaintiff:

Robert Doran The Defendant, Jenny Hinch: Appearing in person on behalf of both defendants

Place and Date of Hearing: Vancouver, B.C. April 10, 2013 Place and Date of Judgment: Vancouver, B.C. April 16, 2013

- [1] The plaintiff appeals the decision of a Master to grant leave to the defendants to apply to set aside two garnishing orders before judgment, one of which has resulted in the payment into Court of certain funds. I. BACKGROUND
- [2] The defendants owed the plaintiff a sum of money secured by a promissory note. The debt was in relation to a dealer agreement between a company controlled by the defendants and a company related to the plaintiff respecting the distribution of a water product. The agreement was terminated and litigation ensued. The plaintiff obtained two garnishing orders which sought to recover money from the defendants prior to obtaining judgment in this action. The plaintiff was successful in the sense that some money was paid into Court by one of the financial institutions.
- [3] The parties subsequently attended a case planning conference with Mr. Justice Dley. At the conference, they settled all issues between them respecting two actions. A consent order, dated April 12, 2012, was filed reflecting the settlement. However, a term of the order was that it would not be effective unless the defendants and their company did not compete with the company related to the plaintiff until October 31, 2012. The plaintiff-related company alleges that the defendants and their company breached that provision, among other alleged breaches.

- [4] The consent order was varied by Mr. Justice Armstrong on October 31, 2012 to extend the non-competition term until April 12, 2013 or further order of the Court. One of the conditions of Mr. Justice Armstrong's order was that no party could take further steps in either of the actions without leave of the Court until the issues raised by the corporate relative of the plaintiff are resolved.
- [5] There is an unresolved issue concerning whether the conditional consent order is binding on the parties or not because of the alleged breach of the non-competition term. That hearing is set for May 10, 2013.
- [6] Not wishing, or being able, to wait until May, the defendants sought leave in January to apply to release the garnishing order. Their Notice of Application stated that they sought leave to bring an application to release the garnishing order for three reasons:
- a. The garnishing orders create a hardship for the defendants. The defendants simply cannot afford to have their money tied up in court any longer. The Defendants have two minor children living with them and a mortgage to pay.
 - b. The merits of the Plaintiff's claim that the defendants breached the non-compete clause of the Consent Order is weak. Mr. Justice Armstrong, in his reasons for judgment delivered on October 31, 2012 stated in paragraph 24 that in his view, the strength of the applicant's case is not overwhelming, and that he does not place great weight on the strength of the applicant's case.
 - c. The affidavit filed in support of the garnishing order before judgment is defective, in that it is misleading.
- [7] However, the single affidavit of the defendant Jenny Hinch, filed in support of the application, provided no evidence respecting any of the three reasons, nor did it even incorporate the reasons by referring to them and saying they were true. II. THE MASTER'S DECISION
- [8] In the Master's oral reasons, the Master noted the three reasons the defendant set out in their Notice of Application for seeking leave to apply to set aside the garnishing orders. However, the Master did not grant leave for any of those three reasons (any one of which, if supported by some evidence, may well have provided a basis for the Master to do so). Rather, the Master concluded that it was in the interests of justice to grant leave due to the extraordinary nature of a garnishing order before judgment. III. DISCUSSION
- [9] In my view, it was incumbent on the defendants to provide evidence to support the reasons they sought leave to apply to set aside the garnishing orders. In the absence of such evidence, the Master would have had no basis to rely on any of the three reasons advanced in the Notice of Application. Having said that, in this case the Master made a decision without relying on any of the reasons advanced. Rather, the Master simply felt that it was in the interests of justice to grant leave because of the extraordinary nature of the garnishing orders. There is no question whatsoever that the law recognizes the extraordinary nature of

a garnishing order before judgment as articulated in the decision referenced by the Master: see *Key Insurance Services Partnership v. T. Clarke Insurance Services Ltd.*, 2010 BCSC 1857 at para. 17. But that, in itself, was not a valid reason to grant leave to the defendants in these circumstances. The Master needed to ground the decision to allow the application in at least one of the reasons advanced by the defendants for seeking leave. The Master did not do this, nor could the Master have done so given that the allegations respecting the factual bases for the reasons were not supported by evidence. IV. CONCLUSION

[10] In the result, I conclude that the Master was clearly wrong in granting leave to the defendants to apply to set aside the garnishing orders. The plaintiff is entitled to its costs of the appeal and the proceedings before the Master, on Scale B. "Melnick J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/SC/13/06/2013BCSC0655.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/0766731-b-c-ltd-v-hinch-2013>

Prepared on 27 October 2026 · Esheria