

CANADA / JUDGMENT

0856464 B.C. Ltd. v. TimberWest Forest Corp.

2012 BCSC 98

COURT

Supreme Court of British Columbia

DECIDED

24 January 2012

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2012 BCSC 98 0856464 B.C. Ltd. v. TimberWest Forest Corp. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: 0856464 B.C. Ltd. v. TimberWest Forest Corp., 2012 BCSC 98 Date: 20120124 Docket: S095698 Registry: Vancouver Between: 0856464 B.C. Ltd. Plaintiff And TimberWest Forest Corp., TimberWest Holdings Ltd., and TimberWest Forest Company Defendants Before: Master Young Reasons for Judgment Counsel for the Plaintiff: B.G. McLean J.S. Hindess Counsel for the Defendants: W.B. Milman P. Morrow Place and Date of Hearing: Vancouver, B.C. December 28 and 29, 2011 January 4, 2012 Place and Date of Judgment: Vancouver, B.C. January 24, 2012

- [1] On October 13, 2011, in this action, I rendered a decision (2011 BCSC 1365) wherein I allowed substantial amendments to the notice civil claim to include, among other things, an allegation that the defendant interfered with the economic relations of the plaintiff.
- [2] This matter came back before me to settle the terms of the order. The parties have agreed to a form of order and to allow most of the amendments in the proposed amended notice civil claim with one exception. The defendants say that the tort of economic interference is still not properly pleaded because the plaintiff has failed to plead all of the necessary elements of the tort.
- [3] Those elements were set out at paragraph 16 of my decision of October 13, 2011 wherein I quoted from 671122 Ontario Limited v. Sagaz Industries Canada Inc. (1998), 40 O.R. (3d) 229. For ease I will repeat that paragraph and quote here:
- [16] This emerging tort is described in 671122 Ontario Limited v. Sagaz Industries Canada Inc. (1998), 40 O.R. (3d) 229 as requiring someone intentionally employing an unlawful means to interfere with a business relationship or business expectancy. Unlike the tort of inducing a breach of contract, this tort does not require proof that an existing contract has been broken or impaired. At p. 14 of 671122 Justice Cummins says: In my view, and I so find, there is a tort in the Canadian common law which I shall call the "tort of unlawful interference with economic relations". The elements of the tort of "unlawful interference with economic relations" are:

- (1) the existence of a valid business relationship or business expectancy between the plaintiff and another party;
 - (2) knowledge by the defendant of that business relationship or expectancy;
 - (3) intentional interference which induces or causes a termination of the business relationship or expectancy;
 - (4) the interference is by way of unlawful means;
 - (5) the interference by the defendant must be the proximate cause of the termination of the business relationship or expectancy; and
 - (6) there is a resultant loss to the plaintiff.
- [4] The plaintiff alleges that the defendants interfered with the relationship between Munns Lumber 1956 Ltd. ("Munns") and its employees' union. The alleged interference was a two-step process. The first step was to force a breach of contract between the defendants and Munns so that Munns' relationship with the union was severed. If Munns was no longer in business, then the defendants had the right of successorship under the collective agreement. This could only occur if: (a) Munns wound up the business, (b) Munns became insolvent (c) the contracts were terminated or (d) the contracts were not renewed.
- [5] The second step in the alleged interference was to force a breach of the collective agreement between the union and the defendants who stepped into Munns' shoes. The defendants needed to resume its obligations to the employees as successors to the contract in order to breach the collective agreement by creating circumstances under which employees were pressured to consent to the defendants' subdivision plan.
- [6] As a result of the subdivision plan the union lost the guarantee that timber volumes would not fall below historical levels. Munns was not affected by the subdivision plan because it was no longer in business when the subdivision plan took effect.
- [7] The allegation is that the target for the interference was the union. The alleged loss suffered by Munns was collateral damage so to speak. It was caused by the defendants' alleged tortious acts and not by the damage suffered by the union.
- [8] Munns lost the opportunity to continue the five-year contracts and the ability to negotiate renewals of the contracts once the defendants interfered with economic relations, forcing it out of business and forcing the union to consent to the subdivision plan.
- [9] The defendant submits that the proposed amended notice of civil claim does not comply with paragraph 18 of my October 13 decision. I will repeat that paragraph here:

- [18] There was the existence of a valid business relationship between Munns and another party. Obviously Munns and the defendants had a business relationship, but damages arising from that relationship can be addressed in the breach of contract claim. The tort of interference with economic relations addresses wrongs that would not otherwise be actionable directly by the plaintiff. The question is: Did TimberWest induce a third party to breach its business arrangement with Munns?
- [10] Perhaps, in the unique circumstances of this case, that paragraph is too simplistically worded. The allegation in fact is that the defendants forced Munns to sever its relationship with the union by forcing it out of business, as opposed to forcing the union to sever its relationship with Munns.
- [11] I do recognize the damages suffered by Munns are essentially the same as the breach of contract damages, but the cause of the damage is different. If the breach of contract claim succeeds, Munns' damages are loss of revenue from these contracts, loss of future opportunity and the loss of the business as a going concern. The economic interference is being pleaded as an alternative claim. In the event that the plaintiff cannot establish its breach of contract claim it intends to seek the same or similar damages from the tort claim. In that respect the tort claim is being pleaded to address wrongs that might not otherwise be actionable by the plaintiff.
- [12] The damages themselves look the same but are created by two distinct causes of action, one in contract and one in tort as the alternative claim.
- [13] At paragraph 24 of my October 13 decision I speculate that if Munns still had been in business and the subdivision plan had come into effect, that would have resulted in the loss to them because contracts would have been smaller. This was mere conjecture. The subdivision plan could not come into effect while Munns was still in business. I do not find that it is essential at this stage of pleadings to establish that a loss to the union caused damage to Munns because chronologically this is impossible.
- [14] Whether there is a direct link between the tort and the damage, flowing from the interference, is a triable issue. I cannot determine whether the plaintiff can prove there is a direct link, but I do find it is an acceptable pleading that the plaintiff should be given an opportunity to try its case. I am applying a generous approach to this question of amendment of pleadings. I do not find this pleading to be frivolous.
- [15] I am satisfied that the loss or damages described paragraph 22 of Part 3 of the proposed amended statement of claim are sufficient to satisfy the sixth element of the tort as set out by Justice Cummings. Paragraph 22 says:
22. This economic interference resulted in Munns suffering loss and damage including as follows:

- (a) Lost opportunity afforded by the rights and benefits of and incidental to the collective agreement extending in 2007, for 5 years, the 2003 - 2007 Coast Master Agreement, including to complete the 5-year terms of the Cowichan Contract B, the Honeymoon Bay Contract B and the Sooke contract and to extend each of those contracts for a further term or terms or acquire other logging contracts; and
 - (b) Loss of its business as a going concern; and
 - (c) Costs of its insolvency including H.S.B.C. incurred fees and expenses and the fees and expenses incidental to its bankruptcy.
- [16] The defendants also argued that the plaintiff has failed to plead that the interference came about by unlawful means.
- [17] I do not agree with that submission. The plaintiff alleges that the defendant intentionally bargained in bad faith with Munns, with the knowledge that it would harm Munns. That sounds like an allegation of unlawfulness to me.
- [18] I will settle the terms of the order and attach the proposed amended notice of civil claim as Appendix A to the order. "B.M. Young" Master B.M. Young
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Prepared on 29 October 2026 · Esheria