

CANADA / JUDGMENT

0928234 B.C. Ltd. v. Starmark Properties Corp.

2024 BCSC 2451

COURT

Supreme Court of British Columbia

DECIDED

31 October 2024

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2024 BCSC 2451 0928234 B.C. Ltd. v. Starmark Properties Corp.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

0928234 B.C. Ltd. v. Starmark Properties Corp.,

2024 BCSC 2451

Date: 20241031

Docket: S213035

Registry: Vancouver

Between:

0928234 B.C. Ltd. and Ali Ibrahim

Plaintiffs

And

Starmark Properties Corp., 0930825 B.C. Ltd., Maryam Pour-Nasrollah,

Shima Hashemi aka Shima Golfeshan, Parham Golfeshan,

Shadi Hashemi and Ali Ashgar Hashemi

Defendants

Before: The Honourable Madam Justice Sharma

Oral Reasons for Judgment

In Chambers

The Plaintiff Ali Ibrahim, appearing in person and as representative for 0928234 B.C. Ltd.:

A. Ibrahim

Counsel for the Defendants Starmark Properties Corp., 0930825 B.C. Ltd., Maryam Pour-Nasrollah,

Shima Hashemi aka Shima Golfeshan, Parham Golfeshan, and Shadi Hashemi:

L. Rogers

D. Campbell, Articled Student

Place and Date of Trial/Hearing:

Vancouver, B.C.

October 30-31, 2024

Place and Date of Judgment:

Vancouver, B.C.

October 31, 2024

- [1] THE COURT: This is an application by most, but not all, of the defendants for an order for security for costs. They also seek an order that the action be stayed until those costs have been paid, and that the applicants have liberty to apply to dismiss the action if the security deposit is not paid within 14 days.
- [2] Ali Ibrahim, a plaintiff who is representing himself as well as the plaintiff 0928234 B.C. Ltd., opposes the relief sought.
- [3] This matter came before me in general chambers. There was a dispute between the parties about the amount of time that it would take. Mr. Ibrahim may not be aware of this, but judges do not always have the chance to look at binder material before they are on the bench dealing with a matter in general chambers. However, I did have that opportunity, so I was already somewhat familiar with the notice of application and the response that was filed. I also had an overview of the litigation.
- [4] The matter was first called and Mr. Ibrahim applied for an adjournment, which I denied. The matter was stood down in the hope that a referral judge would be available since it was a busy chambers day.
- [5] The applicants said they only needed 45 minutes. Mr. Ibrahim did not agree with that estimate. If a referral judge became available, that judge may have needed a bit more time for the hearing given that the referral judge would not have read the material.

- [6] As it turned out, we got through the rest of the general chambers list and this matter came back before me in the afternoon, and I said we would go ahead. Mr. Ibrahim may have been confused because I had said in the courtroom that if referred to a different judge, the matter might need two hours, but that of course was an estimate for a different judge--I had already read the material.
- [7] We went ahead. Both sides had an equal time to speak, but Mr. Ibrahim wanted more time. I set the matter over to be heard this morning in order to give him more time. I told him to put his thoughts together to make sure that he could complete his submissions in time.
- [8] Mr. Ibrahim is self-represented. Notwithstanding that I agree with the comments of counsel that Mr. Ibrahim has been in the court a lot, I appreciate that it is more difficult for a non-lawyer to respond quickly to matters as they come up in court. That is why I decided to convene this morning to give Mr. Ibrahim overnight to contemplate his response. I appreciate that he came today with a more focussed response, which was helpful.
- [9] The only issue is whether I should order security for costs. There is no dispute about the applicable law, which was cited to me from *Hu v. Lee*, 2022 BCSC 56. The considerations are: (a) the ability of the defendant to pay costs if ordered; (b) the merits of the case; (c) the level of costs; (d) any prejudice to the plaintiff as a result of a delay in the application; and (e) prejudice to the plaintiff in the sense of preventing it from proceeding.
- [10] Mr. Ibrahim also referred to case law that confirms when the court considers security of costs against an individual as opposed to a corporate plaintiff, the test to meet is higher because of concerns about, among other things, access to justice as stated by Madam Justice Prowse in *Extra Gift Exchange v. Accurate Effective Bailiffs*, 2008 BCSC 440. The principles that Mr. Ibrahim focussed on were addressed by the applicants, which were: (i) the person applying for security of costs has to show special circumstances; (ii) security for costs against an individual plaintiff should only be given in limited circumstances; and, (iii) the court must exercise caution and only order security sparingly, in special circumstances.
- [11] The applicants here say that they meet all of these factors. Given that this matter arose in general chambers, I rely heavily on the notice of application and the response, and the history of the litigation that has been set out in them. I will not repeat all of that history, but I will simply mention the highlights.

History of Litigation

- [12] This matter was started in March 2021. Mr. Ibrahim originally obtained default judgment and then damages by way of a without notice application following from that default. Those orders were set aside by Justice Coval (2024 BCSC 615) and there is a hearing in the Court of Appeal today on that judgment. That is one of the reasons Mr. Ibrahim says that I should not be granting security for costs.

- [13] The applicants point to a number of judgments that have been issued in this proceeding, albeit against not all of the defendants. In particular, they point to the judgment of Madam Justice Murray (cited as 2024 BCSC 955), and they point to her comments. In her view, Mr. Ibrahim uses litigation as a weapon and a tactic, not to pursue legal rights, but to extract financial settlement or apply pressure improperly: at paras. 85-86. I make note of that finding. It is not binding on me in terms of assessing the application in front of me but, with respect, it would be odd and not in keeping with the comity that we have for our colleagues to ignore Murray J.'s comments. I do not make a decision based on her comments, but I take them into account and give them considerable weight.
- [14] I also note the comments of Mr. Justice Thomas (cited as 2023 BCSC 1795) as well as Mr. Justice A. Ross (cited as 2024 BCSC 1898), all of which favour the applicants' position, but I once again emphasize that I am not making a decision based on those comments. I am applying the test to the facts in front of me.
- [15] And to be clear, I rely on the history of the proceedings that is set out in the factual basis in the notice of application at paras. 1-21. I am satisfied that it accurately represents what has happened in this case.
- [16] As I said, Coval J.'s decision is going to the Court of Appeal. The parties agreed to stay the proceedings related to the set aside order pending that appeal. However, there are other factors that the applicants rely on.
- [17] Mr. Justice Crerar granted the adjournment that was requested by Mr. Ibrahim, but he also ordered Mr. Ibrahim pay costs thrown away and made the next hearing date peremptory on Mr. Ibrahim. Those costs were fixed in the amount of \$600, and although that was ordered in January, Mr. Ibrahim refused to pay them until May 2024.
- [18] The applicants allege that, contrary to Crerar J.'s court order that Mr. Ibrahim not bring any further applications until after the applications for summary judgment and setting aside the default were heard, Mr. Ibrahim filed an application seeking to amend his notice of civil claim. In response, the applicants brought an application for contempt.
- [19] When Coval J. finally addressed the summary judgment application, he ordered Mr. Ibrahim to pay the aforementioned \$600 within seven days, which is an unusual order for the Court to grant, and I rely on the history that has been set out as to why that unusual order was made.
- [20] There is also the costs certificate signed by Associate Judge Harper for the amount of \$7,042.21. Mr. Ibrahim requested a review of that costs order. Ross J. dismissed it, and additionally ordered costs in the fixed amount of a thousand dollars. Those have also not yet been paid.

- [21] The applicants also point out that at the time when Coval J. was seized of the matter--which he is no longer--he ordered Mr. Ibrahim to file his responsive material to a second summary judgment application by August 15, and Mr. Ibrahim has not done so.
- [22] At a second case management conference, Coval J. ordered that he was no longer seized of the matter, and, by consent, the parties would take no further steps in the proceeding pending the outcome of the appeal with the exception of the following: (i) Mr. Ibrahim seeking a review of the costs award (that was dismissed by Ross J.); (ii) the applicants proceeding to enforce the summary judgment costs award; and lastly, (iii) any party making an application for security for costs.
- [23] Justice Coval also ordered Mr. Ibrahim to provide current evidence to counsel of his asserted medical issues and travel schedule. Mr. Ibrahim has provided an omnibus doctor's note of his medical issues, but not his travel schedule.
- [24] Mr. Ibrahim then attended an examination in aid of execution. The applicants' position is that he only attended briefly and refused to answer substantive questions. I appreciate that Mr. Ibrahim may not agree with that characterization, but that is something that the applicants also rely on.
- [25] Mr. Ibrahim's response, which I have taken the time to read, mostly contains matters that are either entirely irrelevant or of marginal relevance. However, he does appropriately address security for costs in his material and he focusses on the issue of delay.
- [26] He submits that this matter started in March of 2021 and in his words, he has proceeded diligently. He also submits that he succeeded in getting a default judgment and getting damages awarded. He is hoping to successful appeal of Coval J.'s decision to set aside the default judgment and damages.
- [27] The delay is explainable because the grounds upon which the applicants rely on in seeking security of costs did not exist until time had passed. Therefore, I do not find that to be a bar to security of costs.

Analysis

- [28] I now address the factors as summarized in Hu.
- [29] I first address the ability of the defendant to pay the costs. I do not have any direct evidence about Mr. Ibrahim, and he tells me now that he got a loan from the corporation. That information, however, is not in an affidavit and was only provided on the second day of the hearing. Thus, I am not persuaded that it is a bar against granting security for costs.
- [30] Mr. Ibrahim represents himself as a sophisticated business person, and I do not have any evidence to suggest that this is not the case.

- [331] I now address the merits of the case, and I echo the comments made by Thomas J. about Mr. Ibrahim's case. As I understand it, the assertion against Maryam Pour-Nasrollah is based on an agreement that she signed as a director of Starmark. Yet, despite numerous affidavits being filed, there has never been a signed agreement put into evidence.
- [332] The other defendants are not part of that agreement, and some of them say they have never met Mr. Ibrahim. It is unclear why they are named as defendants. Mr. Ibrahim appears to think that because they are related, or know Maryam Pour-Nasrollah, that they must know about the events. It is also clear that he takes a different view as to the other defendants' state of knowledge. Those facts have been addressed by other judges and I need not mention them, nor I do make any findings.
- [333] The point is that the pleadings, on their face, assert something (the agreement) that never been filed in evidence, notwithstanding numerous affidavits. Therefore, I find that the allegations are tenuous, and on that basis, I find that the merits of this case are weak.
- [334] Turning now to the level of costs, I am satisfied it is appropriate. There was a draft bill of costs put in front of me relating to the potential for a 10-day trial, and that amount was just over \$27,000. The applicants are seeking \$40,000, but in submissions, reasonably indicated that a lower amount more closely matching that draft bill of costs may be appropriate.
- [335] I now turn to the prejudice to Mr. Ibrahim as a result of the delay in the application, which I have already addressed in part. He did focus on this factor, but as I have stated, the grounds supporting the notice of application refer to events that did not exist at the time the litigation started. It is only due to the conduct that has occurred throughout this litigation that gives rise to the applicants' concern that they will not be able to realize on costs if they are ultimately successful.
- [336] The last factor is prejudice to the plaintiff in the sense of preventing it from proceeding with a meritorious claim. Mr. Ibrahim submits that security for costs would make it difficult for him to prosecute his litigation and that that would be unfair.
- [337] There is no evidence of the difficulty in front of me but, more importantly, I agree with the applicants that Mr. Ibrahim has not been deterred from going forth and filing applications when he has been specifically prevented from doing so. It is difficult to believe that he will be deterred. He seems determined to take forth the litigation, with the concern being that he continues to do so even when he has been told not to file certain things.
- [338] Mr. Ibrahim wanted to have another application heard at the same time as this application, which was to seek a stay pending the Court of Appeal hearing. As I stated, that had to go in front of Coval J. However, I add that it is not difficult to imagine that this was a tactical effort to expand the time that a presider would think the matter needed in general chambers, in aid of the matter not getting heard and thus causing further delay.

- [39] I generally agree with the statements made by the applicants in their notice of application, except for some of the adjectives used, that Mr. Ibrahim files voluminous materials, and that his responses are characterized as being almost entirely irrelevant or only marginally relevant. He also includes affidavits that he has already filed in the action to date, and materials from other actions that he has been involved in. In short, he attempts to "argue his entire position at each application" which "causes significant expense to the Applicants, who are required to assemble these materials into the Application Record".
- [40] That accurately describes what was in front of me. It is an important factor because it is consistent with Murray J.'s comment about how she perceived Mr. Ibrahim to behave in the litigation. The applicants point out that they "have been successful (or been awarded costs) on every application they have brought, and that has been heard by the Court, in this Action". They also note that "when confronted with a costs award made against him, Mr. Ibrahim has, at best, significantly delayed payment and, at worst, outright refused to make payment".
- [41] I agree with all those comments. They are established on the evidence in the record. Further to that point, Mr. Ibrahim comes this morning with a bank draft, he says, to pay the entire costs award. The applicants point out that even if that was accepted by me as evidence, even if they accepted that payment, that is only one of the factors in the test.
- [42] With the greatest of respect, Mr. Ibrahim's conduct in bringing that on the morning of this hearing is further evidence of what I find to be troubling behaviour--filing numerous materials to deny and delay, but then only at the last minute, as he did with the \$600 order, offering up the costs amount. That is consistent with Murray J.'s comments, and without going further, I will simply say that the Court is troubled when it sees that kind of behaviour.
- [43] Mr. Ibrahim is a self-represented litigant. I have to be mindful and careful that he is not held to the same standard as lawyers, but at the same time, he is not to be exempted from the procedural rules. It is the unfortunate reality that, on occasion, self-represented litigants rely on their status as self-represented litigants and feign unfamiliarity with rules and court procedures only to use those to try to delay and frustrate the progress of litigation on the other side. With the greatest of respect, that is what is happening here with Mr. Ibrahim.

Disposition

- [44] For all those reasons, I order security for costs in the amount of \$30,000. I also grant all other orders sought in the notice of application that:
- a) the within action is stayed until security for costs is provided;
 - b) the applicants are at liberty to apply to have the action dismissed if the security for costs is not posted within fourteen days;

c) the order for costs of this application are granted to the applicants, payable by Mr. Ibrahim forthwith--I will determine a fixed amount at the end of these reasons so it does not have to be assessed; and

d) there is no need for Mr. Ibrahim's signature on the order related to this.

[45] I will note that, depending on the Court of Appeal's decision, it may be that another application must be brought.

[46] Those are the orders that I have granted. The one issue I will ask about is the lump sum. I want to order lump sum costs for today and yesterday's appearance.

[47] CNSL L. ROGERS: Yes. Thank you, Justice. I have a draft order here to sign. The only difference is I put \$35,000. So you may be able to strike that and put \$30,000.

[48] THE COURT: Yes.

[SUBMISSIONS ON CLARIFYING CERTAIN FACTS AND COSTS]

[49] With regard to costs, I indicated to counsel and Mr. Ibrahim that I wanted to order lump sum costs, and counsel said that a thousand dollars was appropriate. Mr. Ibrahim says \$500. I am ordering a thousand dollars that are payable--I find that to be the appropriate amount.

"Sharma J."

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