

CANADA / JUDGMENT

August-Sjodin v. Francois

2020 BCSC 585

COURT

Supreme Court of British Columbia

DECIDED

17 April 2020

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2020 BCSC 585 August-Sjodin v. Francois IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: August-Sjodin v. Francois, 2020 BCSC 585 Date: 20200417 Docket: 52204 Registry:

Kamloops Between: For the Peter of the August-Sjodin Family: spi7uwe./:Secwepemc, Plaintiff

And Wes Francois, Dale Tomma, Stewart Adamson, Amy Dennis, Stephen Wittmer, Rhys Laug,

Desira John, Oliver Arnouse Defendants Before: The Honourable Madam Justice Donegan

Reasons for Judgment on Application to Dismiss Appearing on his own behalf: P.A. August-Sjodin

Counsel for the Defendants: A.M. Grant Place and Date of Hearing: Kamloops, B.C. March 13,

2020 Place and Date of Judgment: Kamloops, B.C. April 17, 2020

INTRODUCTION

[1] On July 4, 2016, Justice Hyslop order the plaintiff to pay into court security for costs in the amount of \$25,000.00 within 28 days of the date of the order. Nearly two years have passed and the plaintiff has not paid the security. The defendants now apply to have the plaintiff's action dismissed.

[2] For the reasons that follow, the defendants' application is granted.

BACKGROUND

[3] The plaintiff is a member of the Little Shuswap Indian Band (the "Band"). In this action, he seeks relief against a number of defendants, including Kukpi'7 (or in English, "Chief"), Oliver Arnouse and other Band members.

[4] On January 28, 2015, the Council of the Band wrote to the plaintiff. Citing a history of abusive conduct on his part, they requested that he not enter various facilities owned or operated by the Band, including the Band administration offices, the Skwlax Wellness Centre, the Little Shuswap Gas Station, Quaaout Resort and Conference Centre, Talking Rock Golf Course and other Band buildings (the "Ban").

[5] On November 20, 2015, the plaintiff commenced this action, seeking relief respecting the Ban. The plaintiff filed an Amended Notice of Civil Claim on February 5, 2016.

- [6] On May 10, 2016, the defendants brought an application for an order staying the action until the plaintiff paid \$25,000.00 into court as security for costs. On July 4, 2016, in Reasons for Judgment indexed at 2016 BCSC 1213 (the "Reasons"), Justice Hyslop ordered the following:
1. The plaintiff pay into court security for costs in the amount of \$25,000.00 within 28 days of the date of the order;
 2. The action is stayed until the plaintiff pays security for costs into court; and
 3. In the event that the plaintiff fails to comply with any of the above orders, the defendants are granted leave to bring an application to dismiss the action on three days notice to the plaintiff.
- [7] In the Reasons, Justice Hyslop summarized the plaintiff's Amended Notice of Civil Claim. She wrote:
- [6] Mr. August-Sjodin's amended notice of civil claim makes a claim against the LSLIB council, employees and former employees, alleging that Mr. August-Sjodin and his family were denied services that the LSLIB provides to its members and denied entry into LSLIB buildings and facilities. In addition, Mr. August-Sjodin makes the following statements in the amended notice of civil claim:
21. The defendants do not have jurisdiction as per imperial orders of Her Majesty Queen Elizabeth II.
 22. The defendants are liable if they step outside [their] commercial parameters.
 23. As elected officials under oaths of office Oliver Arnouse, Dale Tomma and Wes Francois are federal agents and employed by the crown.
- [7] Mr. August-Sjodin makes allegations against Arthur M. Grant who is LSLIB's counsel in this matter. The allegations are:
24. Arthur M. Grant is the lawyer receiving consideration i.e. money from LSLIB sic and/or the Ottawa Indian Trust.
 25. Arthur M. Grant does not have inherent jurisdiction on unceded-tribal-land.
 39. All members of the BC Law society are British Subjects and held to their Oaths of Office, Oaths of Allegiance to uphold Imperial Orders and the Rule of Law by the spi7uwe of the secwepemc-tribal-people.
- [8] The allegations made by Mr. August-Sjodin are almost impossible to understand. However, the best way to understand the amended notice of civil claim is in its summary, which is under the heading "Part 2: RELIEF SOUGHT":
1. Access to public facilities and services previously denied.
 2. Apologies in writing and in person signed by each of the defendants.

3. Compensation in the amount of \$20,000 in functional fiat Canadian currency from each defendant.
 4. An order for chief and [council] of LSLIB styled and caused to prevent future abuses of power.
 5. A judicial review or criminal investigation into the use of federal money set aside for the use and benefit of the tribal people of this land, including but not limited to revenue from the Quaaout Lodge, Talking Rock Resort, Skwlax Investments Inc., CP Rail and BC Hydro Agreements et al.
- [9] Under the heading, "Part 3: LEGAL BASIS", Mr. August-Sjodin cites the following:
1. Canada Human Rights Act 1985, C-H-6 et al An Act to extend the laws in Canada that proscribe Discrimination.
 2. Criminal Code of Canada 1985. C.C-46 sections 19, 34, 36, 47, 298, 299, 336, 337
 3. Human Rights Code, RSBC 1996 et al. Sections 2, 8, 37, 37(d)(iii), 39
- [10] Under the heading, "Part 4: LAWFUL BASIS", Mr. August-Sjodin cites the following:
1. Royal Proclamation, 1793 et al
 2. Queen Anne's Order in Council, 1704 et al 3.t Lord Dufferin's Order's in Council, 1785 et al
- [11] This amended notice of civil claim has at the bottom of each page these letters and numbers: "UCCS1-2007" with the words "To Your Prejudice" underneath them. Throughout the amended notice of civil claim appear stamps and fingerprints, and on each page other numbers and letters. Their significance are unknown.
- [12] In addition to this action, Mr. August-Sjodin has filed the same complaint with the Canada Human Rights Commission ("CHRC"). The complaint relates to the same alleged events in the amended notice of civil claim. The LSLIB has responded to this complaint incurring legal expenses and it will incur future legal expenses as the complaint process continues.
- [8] Justice Hyslop later summarized the nature of the action and the defendants' response, at paras. 22-25:
- [22] This action was taken by Mr. August-Sjodin because he has been barred from entering and using Band facilities or buildings. This is because Mr. August-Sjodin's behaviour is described by LSLIB, LSLIB council members and guests of the LSLIB's facilities as insulting, offending, disrespectful, bullying, intimidating, and they feel threatened by Mr. August-Sjodin's behaviour. This behaviour takes place at the Skwlax Wellness Centre, the Little Shuswap Gas Station, Quaaout Lodge Resort and Conference Centre, Talking Rock Gold Course and other Band buildings and facilities. The Band has restricted Mr. August-Sjodin's access to the Band's property. Despite this, Mr. August-Sjodin continues to receive his social assistance each month and he continues to send to Band Council and Band employees true bills and

notices.

- [23] Mr. August-Sjodin was given notice in a letter dated January 28, 2015 that he was banned from buildings and facilities. The Band has taken this step as the Band is concerned with the well-being of the Band's employees and its customers. The letter told Mr. August-Sjodin that he could pick up his monthly social assistance at the Wellness Centre and that the Band expects him to act appropriately.
- [24] Mr. August-Sjodin received the letter and sent a facsimile of the letter to the Band a few weeks after he received it with thumbprints on it and with a number of nonsensical comments written on it.
- [25] The Band's amended reply to the notice of civil claim repeats much of what I have described above.
- [9] Having reviewed the pleadings, I agree with Justice Hyslop's summary.
- [10] The plaintiff did not file a response to this application. Nevertheless, he was allowed to make submissions and to tender a copy of a letter he wrote to the Ministry of the Attorney General. In the letter, among other nonsensical assertions, he accuses counsel for the defendants with "grand treason against your Queen by the use of improper use and false conveyance of language and Docking false* articles and other papers into the court to cause harm and damage" and asks for the "head Sheriff to attend [court] in his white shirt for my protection".
- [11] The plaintiff's submissions were not responsive to the application and impossible to understand, but what did come through loud and clear was that he does not feel the court has jurisdiction over him, that he has not complied with Justice Hyslop's order and that he has no intention of ever doing so. DECISION
- [12] The defendants seek to have the action dismissed pursuant to the provisions of Rule 22-7(6) or (7) of the Supreme Court Civil Rules, B.C. Reg. 168/2009 [Civil Rules].
- [13] Rule 22-7 provides the court may, inter alia, dismiss a proceeding where there has been non-compliance with a direction or order of the court. Rule 22-7(5), (6) and (7) provides as follows: Consequences of certain non-compliance
- (5) Without limiting any other power of the court under these Supreme Court Civil Rules, if a person, contrary to these Supreme Court Civil Rules and without lawful excuse,
- (a) refuses or neglects to obey a subpoena or to attend at the time and place appointed for his or her examination for discovery,
- (b) refuses to be sworn or to answer any question put to him or her,
- (c) refuses or neglects to produce or permit to be inspected any document or other property,
- (d) refuses or neglects to answer interrogatories or to make discovery of documents, or

- (e) refuses or neglects to attend for or submit to a medical examination, then
 - (f) if the person is the plaintiff or petitioner, a present officer of a corporate plaintiff or petitioner or a partner in or manager of a partnership plaintiff or petitioner, the court may dismiss the proceeding, and
 - (g) if the person is a defendant, respondent or third party, a present officer of a corporate defendant, respondent or third party or a partner in or manager of a partnership defendant, respondent or third party, the court may order the proceeding to continue as if no response to civil claim or response to petition had been filed. Failure to comply with direction of court
- (6) If a person, without lawful excuse, refuses or neglects to comply with a direction of the court, the court may make an order under subrule (5) (f) or (g). Dismissal for want of prosecution
- (7) If, on application by a party, it appears to the court that there is want of prosecution in a proceeding, the court may order that the proceeding be dismissed.

[14] In *Kondori v. New Country Appliances Inc.*, 2017 BCCA 164, the Court explained the structure of these provisions and the discretion that is involved in their application:

[26] The structure of this provision is as follows. Rule 22-7(5) provides that where there is no lawful excuse for certain defaults ((a)-(e)) then the court may dismiss the proceeding ((f)) or order the proceeding to continue as no response had been filed ((g)). Rule 22-7(6) provides that where a person does not comply with a direction of the court, without lawful excuse, the court may make the same orders.

[27] For the court to dismiss the proceeding or order the proceeding to continue as though no response had been filed, it is necessary that there be no lawful excuse. The absence of a lawful excuse is therefore a necessary condition for exercising the power to dismiss the proceeding or order the proceeding to continue as though no response had been filed.

[28] The absence of lawful excuse, however, does not compel exercise of the power to dismiss or limit the continuation of proceedings. If there is no lawful excuse the court may make the orders described in Rule 22-7(5)(f) and (g). In other words, the absence of a lawful excuse is only a necessary precondition to exercise the powers; it does not compel the exercise of the powers, as there is a residual discretion to make or not make the orders sought. That is the effect of "may" being included in Rule 22-7(5)(f) and (g) and Rule 22-7(6). [Emphasis in original.]

[15] Of course, the exercise of the court's discretion must be done in a principled manner, bearing in mind the overarching principle that the court consider whether, in all of the circumstances, justice requires that the claim be dismissed: *Schwarzinger v. Bramwell*, 2011 BCSC 304 at para. 107.

- [16] In *Schwarzinger*, Justice Fitzpatrick derived from the jurisprudence five factors that a court should consider in the exercise of its discretion:
1. the order sought is a draconian measure, which should be granted only in most exceptional circumstances;
 2. parties are entitled to a second chance before such an order will be granted;
 3. proportionality - the order must be commensurate with the breaches. Lesser sanctions should be considered if applicable;
 4. would a lesser remedy "cure the default and inspire confidence that the court's orders will be respected in the future"; and
 5. explanations offered for the breach.
- [17] I am satisfied that this is one of those exceptional circumstances where justice requires the plaintiff's claim be dismissed. The plaintiff has not attempted to comply with Justice Hyslop's order and has offered no lawful excuse. From his submissions, he makes it abundantly clear that he feels the court has no jurisdiction over him and that he has no intention of complying with the order. He seeks no second chance. No lesser sanctions would inspire confidence that the court's orders will be respected in the future. I dismiss the plaintiff's action.
- [18] I will add that there are other reasons to dismiss the action. Having reviewed the plaintiff's pleadings, I agree with Justice Hyslop's observations at para. 32 of the Reasons:
- [32] Mr. August-Sjodin's complaint is not being able to enter various Band facilities. In his pleadings, Mr. August-Sjodin makes abusive allegations, such as breach of the Criminal Code casting nonsensical allegations against Mr. Grant, LSLIB's lawyer. Considering the allegations in the pleadings and the legal basis for them, his claims have little merit.
- [19] It is plain and obvious that the plaintiff's claim here discloses no reasonable cause of action, contains scandalous allegations, is frivolous and vexatious, and otherwise constitutes an abuse of process.
- [20] The defendants seek special costs of this application and I am satisfied such an order is warranted. As detailed in other decisions, this plaintiff has a history of using the courts for the purpose of harassment and intimidation, giving no thought to his fellow Band members or the time and money that is involved in attending to court actions. This is one of those actions. Although the plaintiff feels he is not bound to follow court orders, he nevertheless persists in using the very courts he disavows as a weapon in his harassment arsenal. The plaintiff's conduct is worthy of rebuke in an award of special costs.

[21] The plaintiff's action is dismissed, with costs of this application awarded to the defendants, to be assessed as special costs. I would ask counsel for the applicants to draft the form of these orders. Only counsel for the applicants need approve the form of the order. "S.A. Donegan J." DONEGAN J.

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