

CANADA / JUDGMENT

Beaudry v. Court

2020 BCSC 2001

COURT

Supreme Court of British Columbia

DECIDED

16 December 2020

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

2020 BCSC 2001 Beaudry v. Court

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Beaudry v. Court,

2020 BCSC 2001

Date: 20201216

Docket: S85627

Registry: Nanaimo

Between:

Joseph Leon Gilbert Beaudry, (a.k.a. Gilbert Beaudry)

Plaintiff

And

William Court, (a.k.a. Bill Court)

Defendant

Corrected Judgment: The text of the judgment was corrected at paragraph [22] on January 8, 2021.

Before: The Honourable Mr. Justice Baird

Reasons for Judgment

The Plaintiff, appearing in person:

J. Beaudry

Counsel for the Defendant:

T. Huntsman

Place and Dates of Trial:

Nanaimo, B.C.

September 15-18, 2020

Place and Date of Judgment:

Nanaimo, B.C.

December 16, 2020

INTRODUCTION

- [1] The parties to this lawsuit have known each other for a decade or so. The plaintiff used to be the defendant's accountant or bookkeeper. They became friends and did some business together, always, I find, on a wink and a handshake. At some point they had a falling out. The present dispute arises from their soured interpersonal relationship.
- [2] The plaintiff has represented himself throughout these proceedings, as he has in multiple previous cases, apparently. According to a civil court registry printout filed in evidence, in 2006 the B.C. Law Society took proceedings against the plaintiff resulting in a permanent order prohibiting him from practicing law without a licence. I infer that he conducts his own litigation, not because he cannot afford a lawyer, but because he thinks he has a knack for it.
- [3] The defendant, on the other hand, has engaged counsel to respond to the present claim at what I can only assume was considerable expense. This is regrettable, but he certainly shares the blame for stringing the matter along. In my assessment of things, the parties became well-entrenched in their respective untenable positions and stubbornly refused to bury the hatchet. It has become a protracted and expensive affair.
- [4] To be blunt, I was not impressed by the credibility or reliability of either party. The plaintiff's claim is mostly mischief and nonsense, except to the very limited extent that I will presently explain. I have decided that the defendant's counterclaim has no merit and must be dismissed.

BACKGROUND

- [5] The plaintiff owns a 23-year-old Hyundai excavator ("the excavator"). He bought it in an insurance sale. It had fallen off a flatbed truck on a logging road and been damaged. He purchased it for \$25,000. According to the vendors it had already accumulated 10,000 hours of active service.

- [6] The defendant is an independent businessman and property developer. It seems that he expressed an interest in buying the excavator in 2012. The plaintiff said he could part with it for \$27,500 with a \$5,000 deposit and instalment payments thereafter. The defendant did not think it was worth that much and did not pursue the matter.
- [7] Sometime in 2014, however, the defendant agreed to rent the excavator. By that time he had purchased a large property in Parksville, B.C. that he wanted to subdivide and develop. He planned to do most of the work himself, including clearing and excavating.

AGREEMENT

- [8] The parties came to an oral agreement according to which the excavator would be rented at a rate of \$60 per hour; it was to be returned at the defendant's cost whenever he was finished with it with a 2/3 full tank of diesel fuel; and the defendant was obliged to change the air filters after every 250 hours of use.
- [9] The excavator comes equipped with a meter that monitors its hours of use. This meter is housed in a stock console next to the operator. Occasionally it needs to be replaced. If functioning properly, it starts running when the machine is turned on and stops when it is turned off. When the defendant took possession of the excavator, the meter - the third one, if I remember the evidence correctly, that had been installed in the excavator's lifetime - was at 579.9 hours of running time.

SUBSEQUENT EVIDENCE

- [10] The plaintiff told me that the parties' arrangements were relaxed. The overall idea was that the defendant could keep the excavator for as long as he liked and use it whenever he needed it. Now and again the plaintiff popped by the defendant's property and saw the excavator parked at different locations. He could tell that it was being used.
- [11] December 31, 2014 was the plaintiff's business year end. He attended the defendant's property on that date. He looked at the excavator's meter. It showed 629.9 hours of use, or 50 hours of use since the defendant had taken possession of it. The plaintiff issued an invoice for \$3,000 in accordance with the parties' agreement.
- [12] The defendant says he paid this bill in cash. He called his friend Pawel Gobis as a witness. Mr. Gobis confirmed that he was present when the defendant handed the money to the plaintiff. The plaintiff denies that he was paid, but he did not pursue payment or ask for the excavator's return. He told me that he "wanted to be nice", and to assist the defendant in completing his building project.

- [13] The plaintiff visited the defendant's property on two or three occasions in 2015. He saw that the defendant was using the machine, but he issued no invoices and there were no discussions concerning rental payments during the year. On December 31, 2015, the plaintiff asked the defendant for the excavator's meter reading. The defendant kept responding that he would provide it but did not.
- [14] On or about March 16, 2016, the defendant turned up at the plaintiff's office and showed him what purported to be a recent cell phone photo of the meter reading. This showed the same hours of usage (629.9) as on December 31, 2014. The defendant claimed not to have used the machine at all in 2015.
- [15] As far as I am aware, no rent was paid for 2015, but still the defendant kept the excavator. Sometime in the early part of 2016, the plaintiff decided to take the defendant to task. He expressed the opinion that the defendant had been using the excavator regularly, the meter reading notwithstanding, and he started issuing demands for payment that the defendant ignored.
- [16] At the end of April 2016, the plaintiff announced that, from now on, he would require the defendant to pay him the sum of \$500 per month in rental fees for the excavator, and unilaterally declared that such fees would be retroactive to January 1, 2015. He also demanded an extra \$1,000 for use of the excavator in 2014 based on his belief the meter must have broken or malfunctioned towards the end of that year.
- [17] The defendant refused to pay these amounts. Instead he offered to make certain repairs to the excavator and return it to the plaintiff, as long as they were quits after that. The plaintiff declined this offer. Discussions between the parties continued. At some point, it is not clear when, the defendant offered to purchase the excavator. This much is agreed. Where the parties differ is in the nature of the agreement.
- [18] The plaintiff alleges, and the defendant denies, that the parties struck a bargain in which the plaintiff would purchase an interest in one of the yet to be subdivided strata lots on the plaintiff's property for \$180,000, with the excavator representing a \$27,000 "down payment" on this amount. The plaintiff testified that his plan was to build some kind of structure on the property and rent it out.
- [19] According to the plaintiff, this deal was conditional on: 1) the plaintiff providing a floor plan; 2) the defendant's wife putting together a budget for materials; and 3) the defendant completing paving, siding and concrete block installation on the plaintiff's notional parcel. The plaintiff says that he submitted his floor plan but the defendant's wife never came through with a materials budget.

- [20] In September 2016, the plaintiff decided that this deal would not work out anyhow. He told me that he realised that the agreed price for his share of the defendant's property was too low. The defendant was unhappy with the amount and was asking for more money. The plaintiff decided that the agreement was going to be more trouble than it was worth and he backed out. When he told the defendant the deal was off, the defendant allegedly asked, "does that mean I don't get the excavator?" The plaintiff responded, "that's right."
- [21] The defendant's version of events, by contrast, is that while there were discussions about the plaintiff buying an interest in his property, they resulted in no agreement, and the excavator formed no part of them. Instead the defendant told me that, sometime in 2015, he and the plaintiff agreed to the free-standing purchase and sale of the excavator for \$22,500 including a \$5,000 deposit. He also alleged that the plaintiff agreed to deduct the sum of \$3,652 from the amount payable on account of repair work that the defendant had performed on the machine. Once again, the defendant claimed that his friend Pawel Gobis was present when he paid the plaintiff the deposit amount in cash. Mr. Gobis confirmed this.
- [22] Whatever the parties might have agreed, there is no dispute that the defendant kept the excavator on his property for many, many months. The plaintiff told me that, eventually, he had opportunities to rent the excavator to other people. He asked the defendant to return it. The defendant kept putting him off. In the end, the plaintiff sent a friend to the defendant's property to collect the excavator. When the friend attempted this, on July 21, 2017, the defendant called the police. He told the responding RCMP officer that the plaintiff owed him money and that he was holding the excavator as security for payment.
- [23] Later the same day the defendant contacted the plaintiff threatening legal action if his agents ever trespassed on his property again. The plaintiff e-mailed the defendant on July 22, 2017 and repeated his demand for return of the excavator. The defendant refused to comply. During the ensuing protracted stand-off, in various correspondence and exchanges between the parties, the defendant never made reference to the supposed deposit amount, the sale contract, or the cost of repairs as his justification for retaining the excavator.
- [24] On September 27, 2017, the plaintiff sent the defendant an e-mail purporting to impose a rental rate of \$500 per day for the excavator and threatening to file a lien claim against the defendant's property to secure payment of "outstanding invoices" and "an agreement to compensate me fairly for other monies you owe me for use [of the excavator] with the meter disconnected." On September 29, 2017, the plaintiff filed a lien claim in this court for just shy of \$125,000. This amount came from an invoice sent to the defendant on the same day that included \$500 per day in rental fees retroactive to July 24, 2016, and \$75,000 for the excavator itself. The lien claim was cancelled by a January 11, 2019 order of Horsman J. on the defendant paying the sum of \$25,000 into court.

- [25] The defendant has insisted from the beginning that the lien claim was fraudulent and illegal. He dug in his heels and refused to pay the plaintiff anything. He kept the excavator and did not offer to return it on any terms. Eventually, on October 11, 2018, he filed a response to the plaintiff's claim, and then, on February 4, 2019, he brought a counterclaim seeking the return of his \$5,000 deposit and compensation for the \$3,652 in repairs.
- [26] Discoveries in the action were held on December 16, 2019. Not long afterward the defendant permitted the plaintiff to inspect the excavator. This was arranged, if I understood correctly, through the defendant's lawyer. The plaintiff arrived to discover that the excavator had been vandalised and the usage meter was missing. The defendant told me that this mischief had been committed by an unknown miscreant - no one associated with him, of course - sometime during the previous night. He said that the machine's battery had been stolen as well. Once again, the defendant's friend Pawel Gobis was on scene to confirm this mysterious occurrence.
- [27] A couple of days later, the defendant finally returned the excavator to the plaintiff. The plaintiff testified that, in the main, the machine was in good working condition. To prove this he played a video in court showing the machine in operation after its return. This was in aid of his argument that he should be granted an award for loss of income. He had other clients who had expressed an interest in renting the excavator, and the video showed that it was fit for the purpose. For some reason the claim for lost income was not in his pleadings.
- [28] The defendant's trial testimony was along similar lines related to the RCMP officer in July, 2017. He said the plaintiff owed him money, and this time he referred the \$5,000 deposit and \$3,652 in repairs. He gave no evidence to prove that he had done any repairs and I have no basis on which to evaluate this part of his counterclaim. At any rate, he testified that he hardly used the excavator after 2014. He said that the plaintiff knew this but told him to keep it just in case. This evidence was corroborated by his wife, who nevertheless told him to get the machine off the property and return it to the plaintiff. The redoubtable Pawel Gobis, who said that he lived on the property throughout most of the relevant interval, gave evidence to a similar effect.

RELIEF SOUGHT

- [29] The plaintiff has come to court asking for all kinds of far-fetched and inapposite forms of relief, some that are set out in his pleadings, others that he asked for only in final submissions. These include:
- 1) the \$3,000 amount that he says he was not paid for the excavator's use in 2014;
 - 2) \$444,400 in rental monies based on his calculation that the defendant wrongfully retained the excavator for a total of 888 days after the plaintiff's unilateral demand of \$500 per day in rental fees;

- 3) \$75,000 for the replacement cost of the excavator, for reasons not easily reconcilable with his claim that, despite everything, the machine was returned to him in good working order, and which, in any event, ignore the obvious fact that the excavator was worth only a fraction of this amount;
- 4) \$200,000 in lost income from his inability to rent the excavator to other people, a sum that the plaintiff seems to have plucked out of thin air;
- 5) punitive damages in the amount of \$175,000 based on unspecified allegations against the defendant of slander, fraud, and theft; and
- 6) a three (3) day jail sentence imposed on the defendant to deter him from future misconduct of a similar sort.

[30] The defendant, meanwhile, has continued to pursue his modest counterclaim as aforesaid.

DISCUSSION

- [31] I should say, I suppose, that there was some dispute about whether the excavator actually belonged to the plaintiff, or whether it remained an asset of a defunct company controlled by the plaintiff and another person called Mr. Sharma. The evidence on this point was not conclusive. I will proceed on the basis that the excavator was the plaintiff's property and that he could deal with it in his own name.
- [32] I am prepared to accept that the defendant paid the plaintiff the \$3,000 rental monies due and payable on December 31, 2014. This has something to do with the fact that Pawel Gobis claims to have been present when the defendant made the payment, but also because there was no evidence of steps taken by the plaintiff to recover the funds if not paid, or even of discussions concerning payment. Such things would have occurred, I think, if the account remained outstanding. I find it unnecessary to address the defendant's limitation defence to this part of the claim.
- [33] Thereafter, during the years 2015 and 2016, I find that the plaintiff was happy enough to leave the excavator with the defendant and was not concerned with charging rent or receiving any payment for the use of it. The likely reason for the plaintiff's equanimity during this period, I have decided, was that he and the defendant were engaged in business discussions concerning development of the defendant's property in Parksville. The plaintiff wanted in on the deal, and free use of the excavator was a sweetener to these discussions.
- [34] I find on all of the evidence that the excavator was not in consistent use after an initial burst of clearing and excavation work on the defendant's property in the latter part of 2014. I do not accept, however, that it was never used after that time. I can think of no reason why the defendant should have kept the machine all through 2015 and 2016 if he never needed it. While the defendant's wife is the only main witness at trial whose evidence I believe, I note that she was away from the property working for most days and was not well placed to monitor the excavator's use. I accept her evidence that she wanted the excavator off the

property, but this was mostly because the plaintiff was suing her on various grounds after she terminated his services as her bookkeeper. She decided, presciently in my view, that the plaintiff was bad news and was poised to cause them a good deal of grief. The plaintiff's lawsuit against her was dismissed, by the way. He represented himself.

- [35] I think it unlikely that there was any free-standing agreement to purchase and sell the excavator. If the parties had come to the terms of sale alleged, and especially if those terms included payment of a deposit and an agreement about the amount of repairs, the defendant would most definitely have referred to this in his exchanges of correspondence with the plaintiff after the matter came to a head. The defendant never said in the course of his dealings with the plaintiff that he was keeping the excavator as security for repayment of his deposit or for repairs.
- [36] Instead, this allegation came to light only when the defendant filed his counterclaim many months later. I reject the evidence of the defendant and Pawel Gobis that a \$5,000 cash deposit was handed to the plaintiff towards the purchase of the excavator. I think it likely, instead, that this is a story that the two of them cooked up, along with the obvious flimflam about damage done to the excavator by an unknown malefactor and the removal of its usage meter the night before the claimant came to inspect it. It was the defendant, I find, who committed this act of sabotage. His motivation was to conceal the fact that, despite his protestations to the contrary, he had been using the excavator and did not wish to pay for it.
- [37] In summary, on all of the evidence, I find that the parties entered into rather a loose agreement about the use of the excavator. The \$60 per hour rental price was agreed, and I am prepared to accept, as previously mentioned, that the rental fees were paid up to the end of 2014. Thereafter, I conclude that the excavator got mixed up in discussions about the plaintiff's potential involvement in the defendant's property development. The plaintiff, I find, was happy for the defendant to continue to keep and use the excavator without cost because it showed his willingness to contribute to the project, and he felt that the machine was being used in furtherance of a development in which he would soon enjoy an ownership interest.
- [38] The defendant, for his part, continued to make at least some use of the excavator, although how much is not clear, and in the meantime he was obliged to repair and maintain it. It was an old machine with many hours of service, probably worth a good deal less than the \$25,000 the plaintiff had paid for it several years before, and I imagine that keeping it going took some time and expense. This, I believe, was the sticking point when the property deal fell through and the plaintiff finally asked for it back.
- [39] By then, of course, the defendant had been using, operating and maintaining the machine for years, all with the encouragement and approval of the plaintiff and without any demand for rental payments. He may well have come to think of himself as the true owner of the excavator. I am inclined to think that he refused to return it to the plaintiff until he was paid some compensation for his efforts at keeping it in working order. When, instead, the

plaintiff started issuing fantastical demands for the payment of stratospheric sums of money, the defendant stubbornly dug in his heels and persisted in his refusals to return it.

- [40] It would have been far better, all things considered, if the defendant had given back the excavator, just as his wife had very sensibly suggested, and either put the whole thing down to experience, or pursued some kind of small claims remedy against the plaintiff, if he cared to. The plaintiff, for his part, could easily have done much the same thing after taking prompt and straightforward steps to obtain a court order for the return of his property.
- [41] Instead, the parties foolishly and pointlessly let matters drift for over two years without resolution, creating a good deal of mischief and aggravation along the way. I agree with defence counsel's opening remarks to the effect that this whole affair is unmistakably silly and that both parties should have known better. Nevertheless, I must attempt to fashion a just, proportionate and equitable resolution to their dispute. In my view, upon deliberation, it should go along the following lines:
- 1) The plaintiff is entitled to no additional rental money for 2014, as I have decided that he was paid in full for the excavator's use during that year.
 - 2) The plaintiff is entitled to no compensation for the period starting on January 1, 2015 until approximately the end of July, 2017, when I find the rental agreement was held in abeyance during the parties' protracted discussions about the plaintiff's involvement in the defendant's property development.
 - 3) This period of abeyance ended when the plaintiff first made his formal written demands for return of the excavator, after which the defendant held onto the excavator at his own risk while on notice that the plaintiff intended to seek damages upon his refusal.
 - 4) In light of the fact that the defendant kept and continued to use the excavator after July 2017, and especially since he attempted to conceal this fact by removing the hours of use meter at the end of 2019, I have determined that it would be just, fair and equitable to require the defendant thereafter to pay rent for the excavator as the parties had originally agreed.
 - 5) The defendant logged 50 hours of excavator use in roughly the months of October to December 2014, and paid \$3,000 at \$60 per hour. While I am persuaded that the defendant continued to use the excavator in the 29 months that elapsed after the plaintiff demanded its return, the available evidence indicates that he did so less intensively than in late 2014.
 - 6) Doing the best I can with the materials at hand, and attempting to strike a reasonable and proportionate resolution of the matter that is fair to both parties, in my view it would be fit and proportionate to require the defendant to pay \$500 per month in rent for the excavator for the 29 months from August 2017, to December 2019, inclusive. This amount incorporates some credit given to the defendant for repairing and maintaining the machine over several years, as well as a measure of censure for damaging it at the end.

DISPOSITION

[42] In the result, I hereby order that the defendant is indebted to the plaintiff in the aggregate sum of \$14,500. This amount will be paid from the security amount paid into court by order of Horsman J. The balance of those funds are to be remitted to the defendant. All other forms of relief sought by the plaintiff, whether or not I have specifically mentioned them in this judgment, are dismissed as unfounded in law, in evidence, or both. The defendants counterclaim is likewise dismissed.

[43] The lion's share of the plaintiff's claim was excessive and vexatious. It has failed except for a modest judgement well below the maximum monetary jurisdiction of the Provincial Court under the Small Claims Act. It follows that the plaintiff is entitled to no costs. In the scheme of things, the defendant's counterclaim was small potatoes and I decline to make any costs order related to it.

"Baird 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/20/20/2020BCSC2001cor1.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/beaudry-v-court-2020>

Prepared on 26 October 2026 · Esheria