

CANADA / JUDGMENT

Borsato v. Basra

2000 BCSC 28

COURT

Supreme Court of British Columbia

DECIDED

10 January 2000

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S00-0028

Citation:

Borsato v. Basra
Date:20000110
2000 BCSC 28

Docket:

9912697
Registry: Williams Lake
IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

DENNIS BORSATO
PLAINTIFF

AND:

DAVINDER BASRA ALSO KNOWN AS BO BASRA AND N.A.K. HOLDINGS LTD
DEFENDANTS

REASONS FOR JUDGMENT

OF

MASTER BAKER

Counsel for the Plaintiff:

A.D. Schmit

Counsel for the Defendants:

A.P. Czepil

Date and Place of Hearing:

December 16, 1999

Williams Lake, BC

INTRODUCTION

[1] The plaintiff's motion seeks -

- 1) An order to strike out the statement of defence filed September 14, 1999 and grant judgment pursuant to R. 2(2)(d) of the Rules of Court; 2) An order that the defendants deliver particulars for the statement of defence filed September 14, 1999, to the plaintiff's solicitor pursuant to R. 19(16) of the Rules of Court; . . . 5) Costs against the defendants. [2] The balance of relief in the motion filed November 30th has apparently been resolved.

BACKGROUND

- [3] The plaintiff sued the defendants by writ and statement of claim filed August 25, 1999, for damages, a declaration of lien, judgment in debt, costs and other collateral relief. The claims arise as a result of an alleged contract between the parties by which the parties allegedly agreed that the plaintiff would supply work and materials in the construction of an addition to existing premises.
- [4] The defendants, in return, allegedly agreed to specific draw payments as the work progressed. The statement of claim consists of 33 paragraphs and is a well prepared document properly pleading the plaintiff's claim.
- [5] The problem arises with respect to the statement of defence. It is a triumph in minimalism that would gladden the heart of John Cage. I can quote it in full:
 1. Except where expressly admitted, the defendants deny the allegations of fact in the Statement of Claim. [6] Nothing is admitted in the document so inferentially everything is denied.
- [7] The plaintiff says that the statement of defence is so inadequate that it should be struck or, in the alternative, that particulars should be directed. The plaintiff says that he cannot properly prosecute his claim without a greater, more detailed, articulation of the defendants' defences.
- [8] The defendants say that the statement of defence is within the parameters of permitted pleadings under R. 19(20) of the Rules of Court. They says that the plaintiff did not refer to R. 19(24) or R. 21(3) in his motion to strike the statement of defence and says that the motion, referenced to R. 2(2)(d), is not sufficient to put the defendants on notice of the grounds for the motion. Finally, the defendants say they are not obliged to provide particulars in the circumstances.

- [9] Counsel for the defendants also stated several times in his submissions on the motion his intent (perhaps recognizing the minimalist nature of his pleadings) to amend and that the application is therefore premature. On that point, during the proceedings, I opined that reference to an intent to amend had more to do with an application to adjourn the motion (which application the defendant was not making) than to addressing the plaintiff's application. For reasons given below, I may have been wrong in that unconsidered opinion.

DECISION

- [10] Dealing first with the defendants' objection to the terms of the motion I reject their argument that the particular Rule must be cited to give validity to the motion. That portion of R. 44(3) is directive and not mandatory (*Braunizer v. Canadian Pacific Limited* (1995) 10 B.C.L.R. (3d) 195 at 197). The motion is clear in its intent to strike the statement of defence and I do not find that the defendants or counsel have been misled in the motion's phrasing or in its reference to Rules. The parties are taken to know the law and in particular the requirements of the Rules regarding specific averments required in any particular circumstance.
- [11] Taking matters in a slight reversal of order, I will deal next with the plaintiff's demand for particulars. I agree with counsel for the defendants in this case that the court cannot order particulars. *Bullen and Leake and Jacob's, Precedents of Pleadings* (12th Edition) states at pp. 115-16:

Particulars will not be ordered of . . . a mere traverse, unless it involves an affirmative allegation, and thus if the traverse, though negative is "pregnant" with an affirmative allegation, particulars of such affirmative allegation will be ordered, but if the traverse is a mere denial, even though of a negative allegation, and it is not possible to read into it an affirmative allegation, particulars will be refused. [12] There is nothing affirmative in this statement of defence. The laconic nature of the statement of defence may have increased the gestation of this law suit, but it is not pregnant in the terms of the above.

- [13] Even if it may be possible in this case to order particulars, I likely would not. It is clear from the authorities that the purpose of particulars is not to remedy inherently bad or deficient pleadings and that directs me to my final considerations.
- [14] Is the statement of defence so deficient that it should be struck, or that the Court should impose some censure or direction upon the defendants? In my view, it is.
- [15] Taken at their basic level, pleadings constitute a kind of conversation between contending parties. One party may well be an unwilling participant in the conversation but that party is nonetheless obliged to give sufficient articulation of its position as to lend some sense to the conversation.
- [16] Enough metaphor. The Rules of Court place certain restrictions on any pleadings. R. 19(24) states, for example:

- (24) Scandalous, Frivolous or Vexatious matters At any stage of a proceeding the court may order to be struck out or amended the whole or any part of an endorsement, pleading, petition or other document on the ground that
- (a) it discloses no reasonable claim or defence as the case may be, (b) it is unnecessary, scandalous, frivolous or vexatious, (c) it may be prejudice, embarrass or delay the fair trial or hearing of the proceedings, or (d) it is otherwise an abuse of the process of the court, and the court may grant judgment or order the proceeding to be stayed or dismissed and may order the costs of the application to be paid as special costs.

[17] On a more positive note, R. 19(1) provides, in part:

19(1) A pleading shall be as brief as the nature of the case will permit and must contain a statement in summary form of the material facts on which the party relies, but not the evidence by which the facts are to be proved. [18] The Rules of Court require specific particulars in certain areas (e.g. fraud, libel, slander, or bills of exchange - Rules 19(11), 19(12), 21(2) respectively). This matter pertains to an alleged contract however so that the defendants rely on the first part of R. 19(20) and indirectly upon R. 19(22):

- (20) It is not necessary in a pleading to deny specifically each allegation made in a preceding pleading and a general denial is sufficient of allegations which are not admitted, but where a party intends to prove material facts that differ from those pleaded by an opposite party, a denial of the facts so pleaded is not sufficient, but the party shall plead his or her own statement of facts if those facts have not been previously pleaded. (22) If a contract, promise or agreement is alleged in a pleading, a bare denial of it by the opposite party shall be construed only as a denial of fact of the express contract, promise or agreement alleged, or of the matters of fact from which it may be implied by law, and not as a denial of the legality or sufficiency in law of that contract, promise or agreement. [19] Finally, R. 21(3) also bears on the matter:

In an action for money due under a contract, a statement of defence must specifically deny such matters of fact, from which the liability of the defendant is alleged to arise, as are disputed. [20] Mr. Czepil relies primarily on the first part of R. 19(20) and argues that he need not plead a tedious, sequential traverse of every fact alleged in the statement of claim. He is correct in this but I do not conclude that R. 19(20) supports the brevity of the statement of defence in this case.

[21] In Britain, a general denial such as in this case is not permitted. Order 18, Rule 13(3) states:

Subject to paragraph (4), every allegation of fact made in a statement of claim or counterclaim which the party on whom it is served does not intend to admit must be specifically traversed by him in his defence or defence to counterclaim, as the case may be; and a general denial of such allegations, or a general statement of non-admission of them, is not a sufficient traverse of them. [22] It is clear from the British authorities that a general traverse such as that contained in the statement of defence in this matter would offend Order 18 Rule 13. Our Rules are not as specific but the issue is addressed by Rules 19(20) above and Rule 19(21):

- [21] If a party in a pleading denies an allegation of fact in the previous pleading of the opposite party, the party shall not do so evasively but shall answer the point of substance. [23] The statement of defence in this case does not "answer the point of substance". It therefore does not comply with Rule 19(21).
- [24] The plaintiff also attacks the statement of defence under Rule 19(24). A pleading is frivolous if it is without substance, is groundless, fanciful, "trifles with the court" or wastes time. This statement of defence does, in my view, waste time and verges on the fanciful. There may, somewhere in the general traverse, be grounds, but as pleaded it lacks substance. It is therefore frivolous.
- [25] A pleading is vexatious if it is without bona fides, is "hopelessly oppressive" or causes the other party anxiety, trouble or expense. This statement of defence cannot be said to be oppressive and possibly not without bona fides, but is almost certain to cause the plaintiff (and indeed has already caused) anxiety, trouble and expense. It is therefore vexatious.
- [26] A pleading, to avoid being embarrassing, must not be concealing or evasive. It must state the real issue in an intelligible form. It must, in short, be a part, even in a minimally articulated form, of that constructive conversation to which I have alluded. This statement of defence does not meet that standard. It is therefore embarrassing.
- [27] The plaintiff seeks an order that the statement of defence be struck for the above reasons and that judgment be entered. R. 1(5) states the purpose of the Rules of Court as " . . . to secure the just, speedy and inexpensive determination of every proceeding on its merits". To enter judgment against the defendant at this stage for the above deficiencies would not meet the stated intent of the Rules.
- [28] R. 2(2) allows the Court considerable latitude in addressing noncompliance:
- Subject to subrules (3) and (4), where there has been a failure to comply with these rules, the court may
- (a) set aside a proceeding, either wholly or in part, (b) set aside any step taken in the proceeding, or a document or order made in the proceeding, (c) allow an amendment to be made under Rule 24, (d) dismiss the proceeding or strike out the statement of defence and grant judgment, or (e) make any other order it thinks just.
- [29] As I have mentioned, Mr. Czepil assured the Court on behalf of the defendants during submissions of his intent to file an amended statement of defence. I think that is the correct course. Bullen and Leake and Jacob's assists on this point, at p. 143:

Where the statement of claim or defence as pleaded discloses no reasonable cause of action or defence because some material averment has been omitted or because the pleading is defectively stated or formulated, the court, while striking out the pleading, will not dismiss the action or enter judgment, but will give the party leave to amend and if necessary to serve a fresh pleading to correct or cure the defects appearing in the original pleading. [30] The statement of defence is

therefore struck and the defendants are directed to prepare, file and deliver an amended statement of defence within ten days of the date of these reasons.

[31] The plaintiff is entitled to his costs on Scale 3 in any event. Although the defendants are correct on the issue of particulars, that portion of the motion was supplemental and secondary to the principal issue, namely the adequacy of the statement of defence at large on which issue the plaintiff succeeds.

[32] The defendants have assured the Court of an intent to amend and is therefore, in a sense, anticipated the Court's direction. That may be so, but it is clear from the record and the evidence that counsel for the plaintiff has been attempting to secure adequate pleadings from the defence for some time. It may well be that, had the motion not been brought on the 16th of December, the plaintiff may still be sending correspondence to the defence requesting its position, details or the substance of its defence. It is therefore my conclusion that the motion was necessary.

"Master Baker"

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