

CANADA / JUDGMENT

Canada Hanjiang Construction Ltd. v. Lee's Noodle House Ltd.

2020 BCSC 1598

COURT

Supreme Court of British Columbia

DECIDED

8 October 2020

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2020 BCSC 1598 Canada Hanjiang Construction Ltd. v. Lee's Noodle House Ltd. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Canada Hanjiang Construction Ltd. v. Lee's Noodle House Ltd., 2020 BCSC 1598 Date: 20201008 Docket: S201727 Registry: Victoria Between: Canada Hanjiang Construction Ltd. Plaintiff And Lee's Noodle House Ltd. 1110837 B.C. Ltd., Angela Lee and Shu-Mei Liu Defendants Before: Master Harper Oral Reasons for Judgment In Chambers Counsel for the Plaintiff, appearing via teleconference: R. Vangenne Counsel for the Defendants, appearing via teleconference: W.C. Vaughan Place and Date of Hearing: Victoria, B.C. October 8, 2020 Place and Date of Judgment: Victoria, B.C. October 8, 2020

- [1] THE COURT: The application before the court arises from the plaintiff's registration of a builders lien and certificate of pending litigation ("CPL") against lands owned by the defendants. The plaintiff did some work at the property and filed its builders lien on May 7, 2019.
- [2] The issue that arises is whether the CPL was filed late and accordingly should be struck. The impact of two ministerial orders as a result of the COVID-19 pandemic are central to the analysis in this application.
- [3] As the builders lien was filed May 7, 2019, s. 33 of the Builders Lien Act, S.B.C. 1997, c. 45 ("BLA") requires that a CPL would have to be filed by May 7, 2020. Although the plaintiff tried to register the CPL on May 25, 2020, it in fact was registered on June 3, 2020.
- [4] The two ministerial orders at issue here are ministerial order nos. M086 and M098.
- [5] M086 extended limitation periods. M098 was made April 8, 2020 to come into effect on April 15, 2020. M098 repealed M086 but replaced it with a new order. Specifically, paragraph 1(1) under the heading "Application" says: This order applies during the period that starts on the date this order is made and ends on the date on which the last extension of the declaration of a state of emergency made on March 18, 2020 under section 9(1) of the Emergency Program Act expires or is cancelled.

- [6] But importantly, paragraph 2 of M098 under the heading "Limitation periods in court proceedings", which addresses every mandatory limitation period and any mandatory time period which is suspended, does not apply to a mandatory limitation period and any other mandatory time period established under the BLA.
- [7] The defendants argue that because of M098, the plaintiff only had until May 7, 2020 to file the CPL as that is the time limit required under the BLA.
- [8] The plaintiff says that because of the operation of M086, which was made March 26, 2020, there was a 20-day suspension of the running of the limitation period, which means that the limitation period for filing the CPL would be May 27, 2020.
- [9] The plaintiff tried to file the CPL on May 25, 2020, but the BC Land Title & Survey Authority ("LTSA") officials would not accept it on the basis of the running of the limitation period. The LTSA reconsidered its position and accepted the CPL on June 3, 2020, accepting that the limitation period was extended.
- [10] I do not see the position of the LTSA as being determinative in this application, nor do I see that the plaintiff is seeking a discretionary order of the court today. I do not agree that the case referred to by the defendants, *Alan Jones Construction Limited v. Hicks*, 2019 BCSC 568, is against the plaintiff here. The plaintiff is not seeking a discretionary order.
- [11] In my view, the limitation period was extended for the 20 days as argued by the plaintiff.
- [12] The plaintiff agrees that the second ministerial order, M098, applies, but so does the first one, M086, and I do not think it is logical at all to interpret the second ministerial order as eliminating the 20-day extension that operated under the first ministerial order. Otherwise, the first ministerial order would be meaningless. I do not think the second ministerial order resurrected the limitation period that was in fact suspended by the first ministerial order.
- [13] I agree with the position of the plaintiff, and I dismiss the defendants' application.
- [14] These reasons are very brief for a couple of reasons. First, the application was estimated to be 30 minutes which indicates that counsel thought it was a relatively summary matter.
- [15] But second, and of more concern, is that the the plaintiff's application response is really inadequate in the legal basis section. What was required is a legal argument that applies the law to the facts of the particular case before me. The legal basis here simply cites s. 33 of the BLA and the two ministerial orders.
- [16] I am compelled to bring to the attention of counsel a long line of cases which decry the inadequacy of legal bases. The case authorities start with *Zecher v. Josh*, 2011 BCSC 311, a decision of Master Bouck, and there are many, many cases that cite that case. It is very important for the party on the other side to clearly understand the legal argument of the opposite party. If my reasons seem a little disjointed, it is, in my defence, partly because of that problem.

- [17] With those brief reasons, that is my decision.
- [18] The plaintiff was successful, but I am not inclined to grant the plaintiff its costs of this application. I am more inclined to order that each party bear their own costs of the application, but I will hear some alternative submissions to that. Presumably it will be for you, Mr. Vaughan, to make that submission.
- [19] MR. VAUGHAN: Well, I think your decision for the parties to bear their own costs under the circumstances due to the insufficiency of the respondent's material is fair under the circumstances.
- [20] THE COURT: All right. Well, that will be the decision then. Each party will bear their own costs of the application. "Master Harper"
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