

CANADA / JUDGMENT

Coughlin v. Lopehandia

2022 BCSC 1873

COURT

Supreme Court of British Columbia

DECIDED

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2022 BCSC 1873 Coughlin v. Lopehandia IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: Coughlin v. Lopehandia, 2022 BCSC 1873 Date: 20221026 Docket: S237344 Registry: New Westminster Between: Jacob Coughlin Plaintiff And Jorge Rodrigo Lopehandia and Praveer Sandhu Defendants Before: The Honourable Justice Edelmann Reasons for Judgment Counsel for Plaintiff: S. Brooks The Defendants, appearing on their own behalf: J. Lopehandia P. Sandhu Place and Date of Trial: New Westminster, B.C. October 3-7, 2022 Place and Date of Judgment: Vancouver, B.C. October 26, 2022 Table of Contents I. Overview... 3 II. Promissory Notes.. 3 III. Economic Duress.. 6 IV. Amount due.. 9 V. Order.. 10 I. Overview

- [1] In 2016, Mr. Coughlin signed an agreement with the defendants to purchase gold. A second agreement was signed in 2017 with Mr. Lopehandia and his company, and Mr. Sandhu acting as a witness. Both Mr. Sandhu and Mr. Lopehandia also borrowed money from Mr. Coughlin at various times. Over the ensuing months and years, both defendants made numerous representations assuring Mr. Coughlin that he would be paid. In September 2018, both defendants signed promissory notes with Mr. Coughlin in relation to the outstanding debts. In November, 2020 an additional promissory note was signed, consolidating the previous notes and adding a promise to repay an additional \$4,000 loan. The gold was never delivered, and aside from one payment by Mr. Lopehandia, the money was also not repaid. Mr. Coughlin now seeks to enforce the promissory notes.
- [2] The primary issue before me is whether the three promissory notes signed by the parties are enforceable. All the parties agree the notes were signed by them, the only issues are whether they should not be enforced because they were overridden by collateral agreements or signed under duress. For the reasons below, I do not accept Mr. Lopehandia's evidence about other agreements with Mr. Coughlin. Even if I had accepted that evidence, I do not find it relevant to the enforcement of the promissory notes. I also do not find the defendants have established the promissory notes were obtained under duress, and therefore conclude the promissory notes are enforceable on the terms set out in them.
- [3] In the following sections I will begin by setting out the law relating to promissory notes and addressing why I do not accept Mr. Lopehandia's arguments relating to collateral agreements. I will then turn to the issue of duress. II. Promissory Notes

- [4] Promissory notes are both contracts and negotiable instruments, and are governed in part by the Bills of Exchange Act, R.S.C. 1985, c. B-4 (the "Act"). The definition of a promissory note in s. 176(1) of the Act includes an unconditional promise in writing engaging to pay a certain sum in money at a fixed future time.
- [5] There is no question the documents signed by the parties are promissory notes as defined by s. 176. The defendants appear to take issue with whether there was valuable consideration provided for the notes at the time they were signed. Valuable consideration for a promissory note may include an antecedent debt or liability (s. 52). A promise of forbearance from the enforcement of rights for a period of time is sufficient on its own to constitute consideration (see *Noren Investments Ltd. v. Brownie's Franchises Ltd.* (1986), 9 B.C.L.R. (2d) 225, 1986 CanLII 853 (BC SC) at paras. 48-50).
- [6] I do not propose to spend significant time addressing the evidence of Mr. Lopehandia. Overall, his evidence was rambling, incoherent, self-contradictory and inconsistent with the documentary evidence before the Court. At times, his sworn testimony veered beyond the implausible and into the realm of outright fantasy. At one point, he suggested that he had received bank transfers from an unnamed "world class bank" for 10 trillion Euros, an amount almost an order of magnitude greater than the entire gross domestic product of this country. The scope of inconsistencies and contradictions in Mr. Lopehandia's evidence was not only evident between his testimony at trial and his examination for discovery, but at times his evidence before me would directly contradict statements he had made only minutes before. The evidence of Mr. Lopehandia was also inconsistent with the documentary evidence before me. He did not challenge the authenticity of any of the documentary evidence, but provided completely implausible explanations. This was particularly evident in relation to the payments made at the time of the gold purchase agreements.
- [7] Mr. Lopehandia admitted that payments of at least \$135,000 were made to him at the time the gold purchase agreements were signed. He spoke at great length about supposed oral agreements between him and Mr. Coughlin to provide "legal money" for various ongoing legal claims in Chile, and that the payments were not in relation to the gold purchase agreements. I do not find any of Mr. Lopehandia's representations to be even remotely credible. Even if I were to set aside the parol evidence rule, I do not accept that bank transfers made on the same day as a written agreement which says an investment was paid in full were in relation to a purported oral agreement that is neither documented nor even referred to in written correspondence. Notably, Mr. Lopehandia did not raise the purported oral agreements until well after Mr. Coughlin sought to enforce the promissory notes.
- [8] I accept the evidence of Mr. Coughlin that he made payments equivalent to \$150,000 USD in relation to the gold purchase agreements. I also accept his evidence that there were several cash loans made to the defendants in the period leading up to the signing of the promissory notes. Even today those debts remain outstanding, and I am therefore satisfied that Mr. Coughlin obtained the promissory notes for valuable consideration and is a "holder for

value" as defined in s. 53 of the Act. The antecedent debts and liability to Mr. Coughlin are the primary consideration for each of the promissory notes. I also find that his agreement to forbear on enforcement of those debts for a period of time constitutes valuable consideration.

- [9] Mr. Sandhu suggests that he should not be held liable on the promissory notes as he did not receive the money and was not a party to the second gold purchase agreement. I disagree.
- [10] On the uncontradicted evidence before me, both defendants had an antecedent debt under the first gold purchase agreement which they both signed as producers. I also find that Mr. Sandhu was an active participant in some form of joint business with Mr. Lopehandia. While they were both evasive in their testimony about the precise nature of the business relationship between them, there is little doubt that Mr. Sandhu was very much involved and presented himself to Mr. Coughlin as part of the gold production business. Over the course of several years, Mr. Sandhu sent many written communications in which he used the term "we" to describe activities or promises made in relation to the investments Mr. Coughlin had made with Mr. Lopehandia. In the time leading up to the signing of the promissory notes, I find Mr. Sandhu was actively engaged in trying to satisfy Mr. Coughlin that the debts would be paid and was even attempting to convince Mr. Coughlin to invest further money in ventures with Mr. Lopehandia. Even on his own evidence, Mr. Sandhu hoped to benefit financially from the development of Mr. Lopehandia's mining businesses. Given the scope of his involvement over an extended period of time, I would find it difficult to believe that Mr. Sandhu was not either receiving a direct financial benefit or hoped to receive one in the future. Joint liability is a well-established concept in the law of contract, and s. 179 of the Act explicitly provides that a promissory note may have two makers who are jointly and severally liable.
- [11] I find that Mr. Sandhu also received valuable consideration for the signing of the promissory notes, in the form of Mr. Coughlin's forbearance from pursuing legal action to collect the outstanding debts. I find it plausible Mr. Sandhu did not want Mr. Coughlin to sue him or Mr. Lopehandia, as it would interfere with the ongoing projects from which he believed he would benefit financially. In exchange for the forbearance and allowance of additional time, he agreed to be responsible for both his and Mr. Lopehandia's debts to Mr. Coughlin. In doing so he became a guarantor and a surety for Mr. Lopehandia's debts as well as his own.
- [12] In any event, even if there had been no consideration flowing directly from Mr. Coughlin to Mr. Sandhu, Mr. Sandhu would still be liable as an "accommodation party" (s. 54) or guarantor (see *Powers v. Mesaros*, 2007 BCSC 694 [Powers] at paras. 20 and 28; *Ashley Equities Ltd. v. Vernon Sight & Sound Ltd.*, 1993 CanLII 1516 (BC SC) at pages 6-7).
- [13] Mr. Sandhu suggested in his testimony that he did not read the promissory note and therefore should not be bound by it. Even assuming his testimony on this point is true, I find there is little relevance to this assertion. It is clear that Mr. Sandhu was provided the promissory notes in advance of signing them. He had the opportunity to review them and

suggest changes. It was recommended to him to obtain legal advice and he had the opportunity to do so. As noted by Rogers J. in Powers at para. 9: Mrs. Mesaros is a fully functional person who operates in the world of adults. Mrs. Mesaros is literate, but she elected to not read the note or the contract. It appears not to have occurred to her to pay attention to the terms of the documents her husband asked her to sign. She deposed that she simply trusted her husband and accepted his request that she sign the documents, and sign she did.

- [14] I adopt the comments above in the circumstances before me. Mr. Sandhu trusted Mr. Lopehandia and signed the promissory notes accordingly. While that trust has perhaps proven to be misplaced, the responsibility lies with Mr. Sandhu for his own actions. III. Economic Duress
- [15] To succeed in a defence of duress, the defendants must establish that (1) a party threatened them; (2) the threats were wrongful - i.e., unfair, excessive or made in a coercive manner; and (3) the wrongful threat(s) overrode the plaintiff's will to the point that the plaintiff had no other choice, or in other words, the wrongful act vitiated the plaintiff's consent and free will (Bell v. Levy, 2011 BCCA 417).
- [16] Other factors to consider in order to determine whether a party entered a contract voluntarily include: (1) did the party protest; (2) was an alternate course open to the party when it chose to enter the contract - e.g., an adequate legal remedy; (3) did the party seek independent advice; and (4) after entering the contract, did the party take legal steps to avoid it. (see Song Woon Enterprises Ltd. v. 762138 B.C. Ltd., 2014 BCSC 967 at paras. 109-110)
- [17] Mr. Sandhu says that Mr. Coughlin attended at his home and threatened him. His evidence as to when this alleged incident took place has, however, shifted over time. At the time of his examination for discovery, Mr. Sandhu deposed that Mr. Coughlin attended at his home sometime in the summer of 2020. The problem with Mr. Sandhu's evidence at the examination for discovery is that, even if the event in question had taken place, it could not have affected the signing of the first two promissory notes in September 2018. At trial, Mr. Sandhu testified that his evidence at the examination for discovery was in error, and that the incident took place sometime in the summer of 2018.
- [18] Mr. Sandhu says that Mr. Coughlin barged in through the front door and threatened to beat him up. Mr. Sandhu says that he was able to calm Mr. Coughlin down and the two of them went for a beer together. There was no assault or other attack. Mr. Sandhu did not report the matter to the police. He did not tell two of his closest friends who also knew Mr. Coughlin. He did not seek any independent advice about what to do in the circumstances.

- [19] Mr. Coughlin denies the incident took place at all. I found Mr. Coughlin to be a credible and forthcoming witness. He was willing to concede when he did not know or did not remember details and did not seek to embellish his evidence. I found him to be largely responsive even in the face of repetitive and poorly phrased questions, in particular on the part of Mr. Lopehandia. I accept his evidence that he did not attend at Mr. Sandhu's home and physically threaten him.
- [20] Both Mr. Sandhu and Mr. Lopehandia say that after this incident, they signed the promissory notes only because they were afraid of Mr. Coughlin, and that they would have signed anything he asked them to. I do not find these assertions to be credible. Having reviewed the communications leading up to the first promissory notes, I see no indication of fear or intimidation. To the contrary, both Mr. Sandhu and Mr. Lopehandia are encouraging Mr. Coughlin to get involved in another joint venture with them.
- [21] The only indication of any hostility on the part of Mr. Coughlin was in a text message two months before the signing of the final note in November 2019. In the period after the signing of the initial promissory notes in September 2018, both Mr. Sandhu and Mr. Lopehandia continued to make representations that Mr. Coughlin would be paid. In September 2019, Mr. Sandhu encouraged Mr. Coughlin to speak to Mr. Lopehandia as there were "some really big things happening right now". Mr. Coughlin testified that he called Mr. Lopehandia who suggested that they did not owe any money because Mr. Coughlin had defaulted on their investment agreements. Mr. Coughlin said this was first time he heard from either defendant that there was not a valid debt. Following the conversation, Mr. Coughlin sent a text message to Mr. Sandhu saying "Fucking lying son of a bitch! Prepair [sic] to be sued. And hurt." Mr. Coughlin testified that he meant hurt financially and was not physically threatening Mr. Sandhu. I accept Mr. Coughlin's evidence on this point given the overall context of the communications and relationships between the parties.
- [22] As noted above, I do not accept Mr. Sandhu's evidence that Mr. Coughlin attended at his home and threatened to assault him, whether in the summer of 2018 or 2020. In any event, even if Mr. Coughlin had shown up angry at Mr. Sandhu's home sometime in the summer of 2018, I do not find the interaction sufficient to have overcome Mr. Sandhu's free will at the time of signing the promissory notes on September 19, 2018. Mr. Sandhu did not pursue any alternative legal remedies, seek independent advice or even tell his closest friends about the alleged incident. Even after signing the initial promissory notes, he did not seek out any legal remedies to have them set aside. To the contrary, he signed a third promissory note over a year later confirming the initial notes. I do not accept that the alleged incident in the summer of 2018 was of such a nature that it would have overcome his consent and free will.
- [23] I find the argument for economic duress on the part of Mr. Lopehandia to be even more tenuous. His only claim to economic duress is the fear he had of the consequences for Mr. Sandhu.

[24] I do not find either defendant was under duress at the time the promissory notes were signed. IV. Amount due

[25] As noted earlier, the promissory note signed in November, 2020 consolidates the obligations in the previous two notes, along with an additional debt of \$4,000. Plaintiff's counsel provided calculations for the 20% interest due under the promissory note. The defendants did not take issue with the calculations. The first table sets out amounts in US dollars, the second in Canadian dollars, with the respective start date for each debt. USD\$ Principal Start Date

of days

Per diem Interest Total \$88,763.50 05-Oct-17 1,825 48.64 \$88,768 \$177,531.50 \$188,584.20 24-Mar-18 1,655 103.33 \$171,011.15 \$359,595.35 Total: \$277,347.70 151.97 \$259,779.15 \$537,126.85

[26] The Bank of Canada exchange rate from USD\$ at the date of trial was 1.3662. Accordingly, the principal of \$277,347.70 USD is equivalent to \$378,912.42 and the interest to date of \$259,779.15 USD is equivalent to \$354,910.27. CAD\$ Principal Start Date

of days

Per diem Interest Total \$15,000.00 01-Aug-18 1525 8.22 \$12,535.50 \$27,535.50 \$4,000.00 15-Nov-19 1054 2.19 \$2,308.26 \$6,308.26 Total: \$19,000.00 10.41 \$14,843.76 \$33,843.76

[27] The total amount owing at the time of trial was therefore a principal sum of \$397,912.42 and \$369,754.03 in interest. V. Order

[28] I find that the promissory notes are enforceable on the terms set out in them. I will therefore make an order that the defendants are jointly and severally liable, and required to pay the plaintiff the principal sum of \$397,912.42 and pre-judgment interest of \$369,754.03.

[29] The defendants will pay all costs, expenses, and expenditures, including the complete legal costs incurred by the plaintiff in enforcing the promissory notes dated September 19, 2018 and November 27, 2020, to be assessed by the Registrar.

[30] The defendants will pay post-judgment interest on the principal sum at the contractual rate of 20% per annum from October 3, 2022 until the principal sum has been paid in full, taking into account any payments made by or on behalf of the defendants to the plaintiff, with any such payments to be applied first to the interest and costs, and then to the principal sum.
"Edelmann, J."

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