

CANADA / JUDGMENT

## Dhami v. Redekop

2020 BCSC 947

### COURT

Supreme Court of British Columbia

### DECIDED

24 June 2020

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

2020 BCSC 947 Dhami v. Redekop

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Dhami v. Redekop,

2020 BCSC 947

Date: 20200624

Docket: S169908

Registry: Vancouver

Between:

Kulwant Dhami and Greenland Growers Nursery Ltd.

Plaintiffs

And

Aldergrove Nursery Ltd. and Lorne Redekop

Defendant

Before: The Honourable Chief Justice Hinkson

Supplementary Reasons to Dhami v. Redekop, 2020 BCSC 630

Supplementary Reasons for Judgment

Counsel for the Plaintiffs:

I.D. MacKinnon

Counsel for the Defendants:

G. Cadman, Q.C.

Written submissions of the Plaintiffs:

Vancouver, BC.

May 21, 2020

Written submissions of the Defendants:

Vancouver, B.C.

June 3, 2020

Place and Date of Judgment:

Vancouver, B.C.

### **June 24, 2020**

- [1] I gave reasons for judgment following the trial in this action which are indexed at 2020 BCSC 630. At para. 304 of those reasons I invited counsel for the plaintiffs to make written submissions if they wished to pursue a claim for aggravated, punitive, or exemplary damages. I indicated that if they wished to make such submissions, they could not adduce evidence to support such claims beyond the evidence that is already in the record.
- [2] I have now received the written submissions of counsel for all of the parties. The plaintiffs elected not to pursue a claim for aggravated damages, but contend that punitive and exemplary damages are interchangeable terms, and seek such damages.
- [3] Counsel for the defendants say that there is no basis for an award of either punitive or exemplary damages.
- [4] I will therefore address the plaintiffs' claims for punitive or exemplary damages.

### **Background**

- [5] I do not intend to repeat my findings in my earlier reasons for judgment, other than to acknowledge those findings relied upon by the parties.
- [6] The plaintiffs rely upon my findings at paras. 65, 76-78, 113-115, 136, 178, 260, 262 and 273.
- [7] The defendants rely upon my findings at paras. 62, 256-257, 260, 273, 276-278 and 281.
- [8] I will set out those paragraphs for ease of reference:

62 In roughly November 2015, events on the Maclure Lands resulted in the involvement of the RCMP, and relations between the Redekops and Mr. Dhami were particularly strained. Mrs. Redekop gave evidence that this caused her to review the challenged document for the first time, and when she did so, she noted that Aldergrove was not named in the document.

65 In July 2016, Mr. Dhami began issuing cheques from his personal account made out to Mr. Redekop, personally, for Greenland's use of the Maclure Lands and has continued to do so. Mr. Redekop has consistently rejected and returned these cheques to Mr. Dhami on the basis that the challenged document is not a valid lease agreement, and on the basis that Mr. Redekop is not the owner of the Maclure Lands. The plaintiffs have not sent any cheques payable to Aldergrove for their use of the Maclure Lands and continue to occupy the lands despite multiple notices from Aldergrove to vacate the lands.

76 I do not accept that Mr. Redekop was that careless or that naïve. It is clear that a number of changes were made to that draft, and I find that they were made at the insistence of Mr. Redekop. I conclude from that finding that he was aware of the contents and the meaning of that draft, and I reject his evidence to the contrary as untrue.

77 Mr. Redekop also gave evidence that he reviewed another draft of what became the challenged document, but did not review the part that set out his designation as the owner of the lands. I reject this evidence as untrue.

78 In my view, the fact that the final document was only two pages and resulted from multiple drafts belies Mr. Redekop's assertion that he simply did not review the part of the document that sets out his designation as the owner of the lands.

113 Mr. Redekop gave evidence that all of his business dealings with Mr. Dhami since 2003 and prior to 2015 had been corporate, and not personal. He confirmed his evidence from his examination for discovery in August 2018 that he understood he never had signing authority for Aldergrove, but could sign contracts and leases on its behalf.

114 However, neither the Redekops nor Aldergrove protested that Mr. Redekop was wrongly noted as the owner of the Maclure Lands until Greenland had relied on the lease, even though the ownership of the lands was known to them.

115 When he was pressed about this evidence, I concluded that Mr. Redekop had confused his signing authority with his ability to sign cheques on the Aldergrove's corporate bank account, but even this was shown to be incorrect as of at least February 2015.

136 Mr. Redekop stated in cross-examination that the challenged document was neither complete nor accurate. When asked, he clarified that the inaccuracy was that he signed from a personal perspective when he was not the owner of the Maclure Lands. He explained that he did not clearly read page one where he was described as the lessor, although he fully and carefully read the second page of the document, and thought he was signing as an officer of Aldergrove. He asserted that to be a proper lease, the signatory line should have stated "Lorne Redekop/ Aldergrove Nursery". I reject this evidence, namely: I do not accept that Mr. Redekop was so careless and naïve in his review of the challenged document; there were several drafts of the challenged document, and at least some of the changes came at the request or direction of Mr. Redekop, and Mr. Redekop signed a document which included a recital that the lessor was the owner of the Maclure Lands.

178 Contrary to what the plaintiffs contend was an implied term of quiet enjoyment, the defendants did not protect the plaintiffs from the consequences of defective title; instead seeking to take advantage of it, taking the position there was an "at will" tenancy. The plaintiffs say that this substantially interfered with their long term plans to grow cedar trees on the property, as the plan required the certainty of a long-term tenancy. The plaintiffs contend that they reasonably believed their ability to continue operating on the Maclure Lands could be hindered with short or no notice, and thus ceased their operations on the Maclure Lands.

256 The validity of the Lease had been in issue since November 2015. Accepting that some time might have been expended in preparing an application to determine the validity of the Lease, I would accept that inactivity on the Maclure Lands could be justified for some period of time. I note that the petition that led to the hearing by Sharma J. that I have mentioned above was filed on June 16, 2016, thus bringing the parties before the Court, albeit on another matter, on January 12, 2017.

257 This action was not commenced until October 21, 2016. Had the plaintiffs moved to protect their interests with respect to the Maclure Lands in a reasonable time, I find that they would have initiated the process by June 2016. Had they done so, they would have been spared the decision that they made in 2018, and avoided the loss of the cedars in the 1-gallon pots.

260 As I have already set out above, I find the defendants' position with respect to the Lease to be untenable. I would go further and say that it is unreasonable. I regard the position taken by the defendants beginning in November 2015 to be disingenuous, opportunistic, and bullying. I award the plaintiffs the sum of \$100,000 for the breach of the term of quiet enjoyment that accompanied the Lease.

262 On January 8, 2018, Mr. and Mrs. Redekop couriered a document to Greenland entitled "Notice of Termination & Notice to Vacate" and then posted it on the Maclure Lands. This document disputed the validity of "the Lease dated February 6, 2015" but stated in part that:

...in reliance on the right of the Lessor to terminate on twelve (12) months' notice, notice is hereby given that we require vacant possession of the property as of January 10, 2019.

If you deliver up vacant possession on or before that date, leaving the lands "in good repair", the moving fee of \$50,000.00 referred to in the lease document will be paid to you.

We do require payment to be made by January 30, 2018 of the sum of \$36,499.80 being the total of two years' rent (\$30,000) and 50% of property taxes for 2016 & 2017 (\$6499.80). Payment should be made jointly to Lorne Redekop and Aldergrove Nursery Ltd.

273 I reject as untrue and illogical, Mr. Redekop's evidence that he understood the termination clause to mean that he would be permitted to terminate the Lease upon 12 months' notice, and by paying a \$50,000 moving fee. Mr. Redekop's evidence that there was a similar clause in a lease agreement dated May 2, 2015, which was not introduced into evidence in respect of the lands located on Fraser Highway, permitting the lessor to terminate the lease with 24 months' notice, is unpersuasive in terms of Mr. Redekop's asserted understanding.

276 Mr. Dhami gave evidence that, to the extent that he could determine what payments were owing under the Lease, he made all required payments in a timely way by tendering cheques for the amounts he believed to be owing, payable to Mr. Redekop, with whom he believed he had contracted. He agreed that at no time did he tender payments to Aldergrove.

277 Mr. Dhami produced uncashed cheques payable to Mr. Redekop for what he calculated as owing under the Lease for 2016 and 2017, but his counsel was advised by counsel for the defendants that "the lease agreement prepared by your client is neither valid nor enforceable". Mr. Dhami was advised to vacate the Maclure Lands and the Fraser Highway properties on more than one occasion.

278 The cheques payable to Mr. Redekop were never negotiated, and were returned to Mr. Dhami or his lawyers. Mr. Redekop conceded that he was unable to say if the tendered cheques addressed all of the payments owing under the Lease. On July 11, 2017, Mr. Redekop's lawyers advised that Aldergrove would accept a cheque or bank draft payable to it for the taxes owing by Greenland for the Maclure Lands. Payment for these taxes had previously been included in one of the cheques tendered to Mr. Redekop.

281 The amount claimed in the notice of January 8, 2018, was not paid, either to Aldergrove or to Aldergrove and Mr. Redekop jointly. That amount was \$36,499.80. Additionally, \$15,700.00 ought to have been paid to Aldergrove in July of this year. It is inconsistent with the claim made by the plaintiffs of a valid and unenforceable leasehold interest that no payment has ever been made to Aldergrove as owner of the Maclure Lands.

## **Punitive Damages**

[9] Both parties have referred me to the decision of the Supreme Court of Canada setting out the principles governing an award of punitive damages in *Whiten v. Pilot Insurance Co.*, 2002 SCC 18 [Whiten].

[10] In that case, Mr. Justice Binnie affirmed the following principles: punitive damages will largely be restricted to intentional torts, but are available in the exceptional cases in contract; the general objectives of punitive damages are punishment (in the sense of retribution), deterrence of the wrongdoer and others, and denunciation; and they should only be resorted to in exceptional cases and with restraint.

- [11] Binnie J. eschewed the traditional exhortatory approach, based on the incantation of time-honoured pejoratives, in favour of a more principled one. He held that an award of punitive damages should further one or other of the objectives of the law, but should be the lowest award that would serve the purpose. He wrote that a mechanical or formulaic approach is not appropriate, preferring instead a proper focus on the defendant's misconduct as opposed to a plaintiff's loss.
- [12] Binnie J. further explained that the governing rule for quantum of an award of punitive damages is proportionality; and that the overall award should be rationally related to the objectives for which the punitive damages are awarded; retribution, deterrence and denunciation.
- [13] In *Elia v. Chater* (1998), 167 N.S.R. (2d) 166 (C.A.) [Elia], Mr. Justice Cromwell, for the Nova Scotia Court of Appeal, upheld an award of punitive damages of \$10,000 in a dispute between a landlord and tenant, stating at para. 58:

Leases are not ordinary contracts; possession and quiet enjoyment are not purely commercial commodities. Perhaps for this reason, punitive damages have been awarded against landlords where their unlawful acts towards tenants have been found to be deserving of punishment: *Parkes v. Howard Johnson Restaurants Ltd.* (1970), 74 W.W.R. 255 (B.C.S.C.); *M. D. Sloan Consultants Ltd. v. Derrickson* (1991), 85 D.L.R. (4th) 449 (B.C.C.A.) As a general rule, punitive damages are rightly refused in most commercial cases. However, where the actionable wrong is markedly divergent from the general standard of business morality and where the totality of the award for compensatory (including aggravated) damages is not sufficient to punish and deter, the trial judge is entitled to consider an award of punitive damages: *Canada Life Insurance v. Stewart* (1994), 118 D.L.R. (4th) 67 per Pugsley, J.A., for the Court at p. 83.

- [14] At para. 60, the findings of the trial judge in *Elia* are summarized:

The trial judge found the landlord's conduct to be reprehensible. It was open to the trial judge to accept, by way of example, the following evidence concerning that conduct and what motivated it:

- the Chaters had no basis in law for telling Elia that her lease was void on Al-Farkh's bankruptcy and that they did this for the purpose of taking unfair advantage of her;
- while claiming to have repeatedly assured Elia that she could stay in the premises if she paid the rent, the Chaters, in fact, engaged in a course of conduct designed to drive her out of them;
- the Chaters refused to accept rent and then levied what is now concede[d] to be an unlawful distraint, claiming the rent was past due;
- Elie Chater told customers and suppliers that Elia was not in business and that they should leave her premises;

-Elie Chater, in the course of an illegal entry, urged the police to arrest Elia and this in the presence of her young son;

-as the situation deteriorated, the Chaters, apparently for the first time asserted a claim to the equipment in the pizzeria, a claim that remains unsupported by the evidence;

[15] In *M. D. Sloan Consultants Ltd. v. Derrickson* (1991), 85 D.L.R. (4th) 449 (B.C.C.A.) [M. D. Sloan], an award of \$25,000 in punitive damages to tenants was upheld by our Court of Appeal where their landlords forcibly took possession of the rental premises, instructed B.C. Hydro to discontinue electric power to those premises, locked the plaintiffs out, and posted up to 12 guards with a pit bull dog, all to discourage the tenants from resuming their tenancy.

[16] Elia was followed by Mr. Justice Meiklem in *Timberland Forest Products (1996) Ltd. v. Pattar Cedar Products Ltd.*, 2008 BCSC 641, who found that the bulk of the plaintiff's losses before him were suffered, not because of the breach of contract, but because the defendants were destructive of chattels in the manner in which they re-took possession and their subsequent conduct eventually deprived the plaintiff of possession of its chattels and amounted to conversion.

[17] Meiklem J. awarded \$10,000 in punitive damages finding at para. 69 that:

the defendants' conduct was malicious, vindictive, high-handed, arrogant, harsh, and reprehensible. The defendants had initially prevailed upon the plaintiff in October 1997 and unilaterally decided to enter and assert the use of part of the demised premises for their own business. The plaintiff acquiesced under protest and reluctantly accommodated an uneasy sharing arrangement, granting the defendants occupancy of 20% of the large building. Motive is relevant when considering punitive damages. (See *Elia v. Chater*, [1998] N.S.J. No. 105 (NSCA) at para. 61.) Clearly the motive in the July 14 1998 unlawful eviction and conversion of chattels was to reacquire the entire demised property. The defendants chose to do that by bullying and the use of force rather than adhere to their contractual obligations and respect the property rights of the plaintiff.

[18] In *Shanahan v. Turning Point Restaurant Ltd.*, 2012 BCCA 411, [Shanahan], the trial judge awarded global damages of \$100,000, without breaking them into specific heads, as Madam Justice Saunders described as "usual". In the result, Saunders J.A. assessed the tenant's entitlement to a punitive damage award, quantifying that award at \$2,500 against a landlord who: blocked the tenant's access to the rented commercial premises; changed the locks; terminated the lease; and refused the tenant's request to remove chattels and improvements from the premises without any right to do so.

## Discussion

- [19] The plaintiffs contend, as observed in *Elia* by Cromwell J.A., as he then was, that commercial landlords tend to have very few obligations to their tenants. They argue that as the defendants negotiated and entered into an agreement with them, the defendants' breach of their right to quiet enjoyment was not accidental, nor was it based on a misunderstanding of the law, but instead, was based on an attempt to renege on the deal by sustaining a position that was untruthful and disingenuous. The plaintiffs say that such conduct is markedly divergent from business morality.
- [20] The defendants assert that:
- a) they never seized the plaintiffs' chattels or property;
  - b) the plaintiffs enjoyed continuous and unrestricted access to the Maclure Lands;
  - c) they made no attempt to interfere with the plaintiffs' sub-tenancies;
  - d) they did not lock gates, nor place security guards in place;
  - e) they made no attempt to cut off utilities; and,
  - f) they did not attempt to exercise "economic duress" over the personal plaintiff.
- [21] The defendants contend, and I accept, that while they asserted that the Maclure Lands lease was invalid, the plaintiffs had continued use of the Maclure Lands up to and including the date of trial, enjoying revenues from two subleases of a part of the lands throughout.
- [22] But the revenue from the two subleases was modest, and the plaintiffs enjoyed only a part of the quiet enjoyment to which they were entitled.
- [23] The defendants argue that the involvement of the RCMP in November 2015, referred to in para. 62 of my reasons for judgment, occurred on other lands leased to the plaintiffs by the defendants, as opposed to the Maclure Lands as stated in that paragraph. Accepting this to be correct, does not, in my view, assist the defendants. The involvement of the RCMP was a part of the strained relationship between the parties, and informs the basis for the defendants' actions with respect to the Maclure Lands.
- [24] The defendants argue that they were successful in asserting the right to terminate other leases with the plaintiffs in another proceeding. I cannot accept that that success justified their assertion that the lease of the Maclure Lands was invalid. If anything, it is consistent with the opportunism, if not the bullying on the part of the defendants that I referred to at para. 260 of my earlier reasons for judgment.
- [25] I am also unable to accept the defendants' submission that their conduct did not rise to the level where an award of punitive damages is warranted.

- [26] From November 2015, to trial, the defendants took the position that the personal defendant had no authority to bind the corporate defendant, in an effort to thwart the plaintiffs' claim to the Maclure Lands. Mr. Redekop took that position under oath during his examination for discovery, and it was not until the continuation of the trial in this matter that his position changed.
- [27] The plaintiffs say, and I agree, that this orchestrated defence is similar to the frivolous arson defence advanced to trial in Whiten.
- [28] The plaintiffs also say that there are a multitude of things the defendants did that deserve denunciation in keeping with the objectives of punishment, deterrence and denunciation, including;
- a) their failure to provide the plaintiffs with protection from adverse title described at para. 178 of my earlier reasons for judgment;
  - b) disingenuousness, opportunism, and bullying described at para. 260 of my earlier reasons for judgment;
  - c) their failure to take issue with the validity of the lease until they had sold their remaining nursery stock to the corporate defendant and let the plaintiffs start their operations;
  - d) the adverse findings of credibility and rejection of aspects of the personal defendant's evidence; and
  - e) that they wanted the corporate plaintiff off of the Maclure Lands due to a dispute amongst the parties concerning another lease.
- [29] I do not accept the assertion as to the motive attributed to the defendants in sub-paragraph e) of the preceding paragraph. I am unprepared to find that the defendants were that Machiavellian.
- [30] I do, however, accept the other factors set out in sub-paragraphs a) to d) inclusive of para. 28 were established and are the fair and relevant considerations that inform the plaintiffs' entitlement to punitive damages.
- [31] The plaintiffs say that the award of aggravated damages in Elia was made because the compensatory damages were not sufficient to punish and deter, justifying an award for such damages in this case. They say that a finding of punitive damages would serve the purpose of denouncing the sharp practice of the defendants acting as a landlord, as well as provide a warning to other landlords not to conduct themselves in bad faith to try and get rid of a tenant.
- [32] I accept that the defendants were not punished by the other remedies the plaintiffs were awarded. The fact that the award, after the set-off was modest is not, in and of itself a reason to add an award for punitive damages.

- [33] The plaintiffs' damage award, and the set-off award to the defendants were the awards supported by the evidence. The other relief provided to the plaintiffs; use of the Maclure Lands for the agreed rent, is no more or less than the bargain between the parties.
- [34] The plaintiffs contend that the appropriate award for punitive damages is \$60,000; the equivalent of four years' rent at \$15,000 per year, for the years they were left under the cloud that their lease was invalid. In my view this ignores my finding that the plaintiffs failed to mitigate their loss by using the property, and I therefore reject it as a basis for an award of punitive damages.
- [35] In the alternative, the plaintiffs quantify their claim for punitive damages at \$25,000, the amount awarded 29 years ago in *M. D. Sloan*. While the conduct of the defendants in that case was far more egregious than that of the defendants in this case, the purchasing power of the award in that case has lessened due to the passage of time since that award was made, and that must be taken into account.
- [36] The conduct of the defendants in their dealings with the plaintiffs was high-handed, and found to be disingenuous, opportunistic, and bullying, and interrupted the plaintiffs' quiet enjoyment of the use of the Maclure Lands.
- [37] Given the principles identified by Binnie J. in *Whiten*, in particular the general objectives of punitive damages; punishment, deterrence and denunciation, restrained by the exceptional nature of this type of damages, I find that a fair award to the plaintiffs for punitive damages is the sum of \$25,000.

#### Court Order Interest

- [38] At para. 305 of my earlier reasons for judgment I wrote:

305 The plaintiffs are entitled to interest pursuant to the Court Order Interest Act, R.S.B.C. 1996, c. 79 and amendments thereto from January 1, 2016, when the term of the Lease was to commence

- [39] The defendants seek clarification of which amounts set out in my earlier reasons for judgment are to attract interest pursuant to the Court Order Interest Act, R.S.B.C. 1996, c. 79. They say that my reasons are unclear whether the amounts due to them by way of set-off should also be subject to such interest.
- [40] The court order interest is to be calculated on the plaintiffs' net recovery, inclusive of punitive damages, after the set-off of the damages awarded to the defendants pursuant to their counterclaim. Even though the plaintiffs offered cheques to the defendants, they were not cashed, and the plaintiffs were thus not deprived of the use of the funds to be covered by the negotiation of those cheques, nor did the defendants enjoy the use of those funds.
- [41] As I have indicated above, court order interest will run from January 1, 2016 on my award for punitive damages as well.

"The Honourable Chief Justice Hinkson"

---

### 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/20/09/2020BCSC0947.htm>

**CASE PAGE**                <https://chat.esheria.ai/case-law/canada/dhami-v-redekop-2020-bcsc-947>

Prepared on 25 October 2026 · Esheria