

CANADA / JUDGMENT

Dick v. Baker

2024 BCSC 658

COURT

Supreme Court of British Columbia

DECIDED

24 April 2024

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2024 BCSC 658 Dick v. Baker

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Dick v. Baker,

2024 BCSC 658

Date: 20240424

Docket:

Registry: New Westminster

Between:

Rodney Daniel Dick

Plaintiff

And

Wessly William Baker

Defendant

Before: The Honourable Mr. Justice Riley

Reasons for Judgment

Requisition filed by the Plaintiff:

New Westminster, B.C.

February 8, 2024

Place and Date of Judgment:

New Westminster, B.C.

April 24, 2024

Introduction

- [1] This is a ruling on an application by Mr. Dick for leave to file a civil action. Mr. Dick and his related companies have been designated vexatious litigants and as such they require leave of a justice of this Court to commence any new actions.

Mr. Dick's Status as a Vexatious Litigant

- [2] There have been multiple orders from this Court and from the Court of Appeal declaring Mr. Dick to be a vexatious litigant. Some of those orders were narrow in their scope, barring Mr. Dick from commencing proceedings or filing applications in respect of particular parties or related parties. For example:
- a) On 20 February 2007, Justice Gray declared Mr. Dick to be a vexatious litigant and made an order barring him from commencing proceedings against the defendant in that action, Vancouver City Savings Credit Union, or any related parties, without leave of the court: *Dick v. Vancouver City Savings Credit Union*, 2007 BCSC 1419 at paras. 14-15.
 - b) On 16 February 2017, the Court of Appeal declared Mr. Dick and his related companies to be vexatious litigants, and barred them from bringing any appeal proceedings against the named respondents in that proceeding, or any related parties. This order was subject to exceptions allowing Mr. Dick or his companies to pursue appeals without leave in limited circumstances: *R.D. Backhoe Services Inc. v. Graham Construction and Engineering Inc.*, 2017 BCCA 91 at para. 33.
 - c) On 6 June 2023, the Court of Appeal declared Mr. Dick and his two related companies to be vexatious litigants, and barred them from commencing or continuing any appeal or application for leave to appeal in the Court of Appeal, against any party, without leave of the court or a justice: *Dick v. Coquitlam (City)*, 2023 BCCA 261 at para. 31 (Chambers, per Griffin J.A.) [*Dick v. Coquitlam*].
- [3] The particular order that governs the current situation was made by Justice Jenkins on 22 December 2017, under s. 18 of the Supreme Court Act, R.S.B.C. 1996, c. 443. That order declared Mr. Dick, R.D. Backhoe, and one other company associated with Mr. Dick to be vexatious litigants, and barred these parties from commencing any new actions in this Court, against any parties, without leave. Mr. Dick's application for leave to bring an appeal from that order was subsequently dismissed on 14 November 2023: *611481 B.C. Ltd. v. Graham Construction and Engineering (1985) Ltd.*, 2023 BCCA 414 (Chambers, per Saunders J.A.).

- [4] In terms of the rationale given by the courts for making multiple vexatious litigant orders against Mr. Dick and his companies, I would refer to Justice Griffin's remarks in *Dick v. Coquitlam*. After finding Mr. Dick and his companies to have "'habitually, persistently and without reasonable cause' commenced vexatious proceedings in the courts of B.C." (at para. 28), Griffin J.A. described the underlying conduct and its effect on the justice system as follows:
- [30] In short, Mr. Dick has proven himself unable to resist abusing the process of the court. He makes very little effort to file sensible and complete documents, initiating applications that then cause others to expend valuable resources trying to make sense of what he is seeking, including resources to review the lengthy and convoluted history of the litigation. This drives up the costs for opposite parties but also wastes very limited public resources devoted to staffing and running the courts, as well as wasting judicial resources. These limited resources end up being spent on his duplicative and frivolous matters, and are then less available to the people who truly need access to justice. These circumstances in my view justify the broad vexatious litigant order envisioned by s. 22.
- [5] These comments were made in the context of Mr. Dick's history of proceedings in the Court of Appeal, but the underlying concerns resonate in this Court as well. It is against that backdrop of past abusive conduct that the Court must assess Mr. Dick's current application for leave to commence a new action.

The Current Application for Leave to Commence a New Action

- [6] The particular action that Mr. Dick seeks leave to commence is a proposed claim against Mr. Baker. It appears to be a claim for a debt related to an investment arrangement with respect to the purchase of two properties in Mexico. Mr. Dick alleges that in 1990 he and Mr. Baker purchased an interest in two Mexican properties. The purchases were made through fideicomisos, which I understand to be trust arrangements that allow non-Mexicans to purchase property in regions of the country where foreign ownership is restricted.
- [7] Mr. Dick alleges that after the purchase, despite his joint ownership arrangement with Mr. Baker, Mr. Dick paid for all of the administrative fees, taxes, and improvements to the properties, with the exception of some \$2,000 that Mr. Baker paid at some point. Mr. Dick says it is unfair that he has paid for all of the fees and improvements, and as a result he says Mr. Baker has somehow lost or should lose his interest in the properties. The supporting materials do not indicate where the proposed defendant Mr. Baker actually resides. Mr. Dick appears to have been communicating with a relative acting as some kind of agent for Mr. Baker, and this relative appears to be based in Mexico.
- [8] Under the Legal Basis portion of his draft Notice of Civil Claim, Mr. Dick has asserted, "If you [n]ot pay your bills you lose your property". Mr. Dick wants to do more improvements, but it seems that he does not want to pay for the improvements on his own if he only holds a 50% interest. It is not at all clear what the legal basis for Mr. Dick's claim is, or what relief he

is seeking in his proposed claim against Mr. Baker. He seems to be seeking an order (i) compelling Mr. Baker to sign a power of attorney in favour of Mr. Dick, or (ii) removing or forfeiting Mr. Baker's trust interest in the properties to Mr. Dick.

Analysis

- [9] In *Gichuru v. Purewal*, 2023 BCCA 345, at para. 46, Justice Groberman explained that in deciding whether to grant leave to commence proceedings in the face of a vexatious litigant order, the court "is entitled to consider the totality of the circumstances", being mindful that the order is not intended to punish the litigant, but rather to "prevent misuse of the justice system". On the one hand, the judge should take into account "the very real possibility that the vexatious litigant, true to past form, is seeking to press proceedings that will waste court resources and serve to harass litigants". On the other hand, the judge must also consider the possibility that the contemplated litigation is legitimate and not abusive, such that refusing leave could result in serious injustice.
- [10] With these objectives and broader concerns in mind, as set out at para. 49 of *Gichuru*, the court must be satisfied that the proposed proceeding is "not doomed to fail", "brought for an improper purpose", or "a clear abuse of process". If the litigant overcomes that minimal threshold, the court must go on to consider whether to exercise its discretion to grant leave and thereby allow the proceeding, considering the "totality of the circumstances". In some cases, it may be apparent that refusing leave could result in "serious injustice" to the litigant. In other cases, the court may conclude that the proposed proceeding is "weak, of no real importance, and uneconomical to litigate". Many cases will fall somewhere in between these two extremes, and the court will be called upon to exercise its good judgment in deciding whether to grant leave.
- [11] Applying those principles in the case at bar, the first question to be determined is whether the proposed action is "doomed to fail", "brought for an improper purpose", or "a clear abuse of process". I conclude that Mr. Dick's proposed action against Mr. Baker is doomed to fail. I say that because the subject matter of the complaint would appear to be an interest in real property situated in another country. As noted in *Armour v. Fuller*, 2009 BCSC 409 at para. 47, "the courts in British Columbia do not have jurisdiction to entertain an action based solely or largely on the ownership and title to foreign land": see also *G.K. v. C.K.*, 2021 BCSC 96 at para. 10. There may be exceptions to the principle where the court can assert in personam jurisdiction as discussed in *Schwarzinger v. Bramwell*, 2011 BCSC 283 at para. 111, but Mr. Dick has not laid out a case for doing so in this particular matter. There is no evidence of an agreement between the parties to select British Columbia as the forum for resolving any disputes, and the starting point would appear to be that the law in Mexico applies to the arrangement. Nor do I see any basis for recognizing jurisdiction over a trust claim where the trust arrangement is documented in Spanish and is related to property located entirely in Mexico. Further, if one were to ignore the interest in land and focus on the amount of money in issue, it is not at all clear that the claim exceeds the \$35,000 limit for

small claims proceedings per s. 3 of the Small Claims Act, R.S.B.C. 1996, c. 430; Small Claims Court Monetary Limit Regulation, B.C. Reg. 179/2005.

- [12] Even if I were to conclude that the claim passes the relatively low merits threshold, I would exercise my discretion against allowing leave. I say that based on the totality of the circumstances, including the jurisdictional concerns expressed above, the lack of clarity in the pleadings, the fact that the underlying documents are all in Spanish and there is no proper translation, all considered against Mr. Dick's background as a person who is known to commence and pursue unmeritorious claims. I note Justice Griffin's comments above in *Dick v. Coquitlam*, observing that Mr. Dick has a history of making "little effort to file sensible and complete documents", and initiating proceedings that "cause others to expend valuable resources trying to make sense of what he is seeking". In this particular matter the draft notice of civil claim is so lacking in focus and clarity that it could not possibly justify any relief in Mr. Dick's favour, and I have no confidence that Mr. Dick would be able to refine his claim and pursue it to a determination on its merits. If allowed to proceed, the case is likely to take up valuable public resources that are better devoted to other cases brought by litigants without a demonstrated history of vexatious litigation.

Conclusion

- [13] Mr. Dick's application for leave to file a notice of civil claim in this matter is refused.

"Riley J."

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