

CANADA / JUDGMENT

# DJ Titanic Services Ltd. v. Guo

2019 BCCA 434

## COURT

British Columbia Court of Appeal

## DECIDED

27 November 2019

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2019 BCCA 434 DJ Titanic Services Ltd. v. Guo COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: DJ Titanic Services Ltd. v. Guo, 2019 BCCA 434 Date: 20191127 Docket: CA46212 Between: DJ Titanic Services Ltd. Respondent (Plaintiff) And Mandeep Bahia (a.k.a. Mandeep Singh Bahia) Respondent (Defendant) And Kent Guo Appellant Before: The Honourable Madam Justice Saunders The Honourable Madam Justice Stromberg-Stein The Honourable Madam Justice Griffin On appeal from: An order of the Supreme Court of British Columbia, dated June 13, 2019 (DJ Titanic Service Ltd. v. Bahia, Vancouver Docket S193044). Oral Reasons for Judgment The Appellant, appearing in person: K. Guo Appearing as agent for the Appellant: F. Wang (S. Tan, Interpreter) Counsel for the Respondent, DJ Titanic Services Ltd.: D.K. Georgetti Place and Date of Hearing: Vancouver, British Columbia November 27, 2019 Place and Date of Judgment: Vancouver, British Columbia November 27, 2019 Summary: This appeal by a third party from an order for payment out of monies, is dismissed. The judge did not err in concluding that the monies were not captured by the appellant's garnishing order.

- [1] GRIFFIN J.A.: The appellant, Mr. Guo, appeals an order made by Justice Skolrood that approved payment of monies out of court to the respondent, DJ Titanic Service Ltd. ("Titanic"). Both Titanic and Mr. Guo advanced claims in separate actions against Mr. Mandeep Bahia for fraud. The present proceeding concerns the Titanic action against Mr. Bahia.
- [2] The facts were set out by Justice Skolrood at paras. 2-6 of his oral reasons for judgment on June 13, 2019, referring to Titanic as plaintiff and Mr. Bahia as defendant:
- [2] The background facts are relatively straightforward. The plaintiff is engaged in the business of purchasing and reselling automobiles. In or about January 2019, the plaintiff entered into an agency agreement with the defendant whereby it was agreed that the defendant would purchase an automobile from OpenRoad Auto on behalf of the plaintiff, acting as the plaintiff's agent.

- [3] Pursuant to that agreement, the plaintiff obtained a bank draft from the Toronto-Dominion Bank in the stipulated amount. The bank draft was provided to the defendant, who in turn provided it to OpenRoad. The draft was drawn on the plaintiff's account and was payable directly to OpenRoad.
- [4] It is apparent from the evidence that the defendant provided that bank draft to OpenRoad, then shortly thereafter advised OpenRoad that he had used the wrong account. He therefore convinced OpenRoad to refund the amount on a representation that he would replace the funds. OpenRoad therefore refunded a cheque to the defendant personally. When the vehicle did not materialize, the plaintiff contacted OpenRoad, who managed to put a stop payment on the refund cheque to the defendant.
- [5] In March of 2019, Mr. Kent Guo commenced a different action against the defendant claiming that the defendant had defrauded him. Mr. Guo says he loaned the defendant \$189,000. In conjunction with the commencement of that action, Mr. Guo obtained garnishing orders against the defendant's bank account and against OpenRoad.
- [6] Given that OpenRoad had the money from the plaintiff in its possession and was aware that both Guo and the plaintiff were asserting an interest in the money, it obtained an order to pay the funds into court. Again, the plaintiff seeks an order for payment out. Mr. Guo opposes that application, arguing that his garnishing orders take precedence.
- [3] Mr. Guo sought to have the judge draw inferences that the funds in question did not belong to Titanic. This was premised on his suggestion that Titanic and Mr. Bahia were in league together and the agency agreement between Titanic and Mr. Bahia was forged. However, he did not have any first-hand knowledge of the arrangements between Titanic and Mr. Bahia. The judge observed there was no evidence to support his speculative allegations.
- [4] The judge was not in error in rejecting Mr. Guo's theory that Titanic was conspiring with Mr. Bahia.
- [5] The judge then analyzed Mr. Guo's legal argument, that he should be entitled to the funds because he obtained a garnishing order against OpenRoad. Mr. Guo argued that the funds from Titanic, refunded by mistake by OpenRoad to Mr. Bahia, were, in fact, deposited into Mr. Bahia's Toronto Dominion bank account. The judge rejected this argument on the basis that the funds never, in fact, cleared Mr. Bahia's account.
- [6] Mr. Guo argues on this appeal that the money returned by Toronto Dominion Bank to OpenRoad actually belongs to Toronto Dominion Bank. There was no evidence for this below, and it was contrary to the fact that Toronto Dominion Bank had, in fact, reversed the transaction, returning the money to OpenRoad.

- [7] Mr. Guo did not produce evidence that would support his theory that the money, in fact, cleared Mr. Bahia's account and belonged in that account. There is a printout of a bank statement but it, on its own, does not support this theory. Regardless, it shows a deposit of the funds on February 14, 2019, but a returned cheque on February 20, 2019, taking the same funds out of the account. Mr. Guo did not sue Mr. Bahia until March 1, 2019, and served a garnishing order on OpenRoad on March 19, 2019.
- [8] The money held by OpenRoad had originated from Titanic. The judge rejected Mr. Guo's theory that it was Mr. Bahia's money. The judge held at paras. 11-13:
- [11] Mr. Guo's position ignores the fact that when OpenRoad learned of the problem from the plaintiff it stopped payment on the cheque to the defendant. The transaction was reversed, the effect being that the funds never in fact cleared the defendant's account. In fact, they never became the property of the defendant.
- [12] This is the answer to Mr. Guo's objection. A garnishing order can only attach monies or debts owing to the debtor, in this case the defendant. Here, the \$118,000 was never the property of the defendant, nor was it money owing to him. I am satisfied on the evidence that the money went directly from the plaintiff to OpenRoad, albeit through the defendant. Nonetheless, it was the plaintiff's money. In this regard it matters not whether the agency agreement was valid or not, although again there is no basis in the evidence to suggest that it is not.
- [13] Not only did the defendant never come into possession of the money, he has never had any valid claim on it. As such, it is not attachable by way of a garnishing order in favour of Mr. Guo.
- [9] Mr. Guo has not shown any errors of fact or law justifying a review of the judge's finding that the funds in question held by OpenRoad were not the property of Mr. Bahia and so were not subject to Mr. Guo's garnishing order.
- [10] I would therefore dismiss the appeal.
- [11] SAUNDERS J.A.: I agree.
- [12] STROMBERG-STEIN J.A.: I agree.
- [13] SAUNDERS J.A.: The appeal is dismissed. "The Honourable Madam Justice Griffin"

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