
CANADA / JUDGMENT

Eng v. Wong

2020 BCCA 148

COURT

British Columbia Court of Appeal

DECIDED

20 May 2020

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2020 BCCA 148 Eng v. Wong

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Eng v. Wong,

2020 BCCA 148

Date: 20200520

Docket: CA45131

Between:

Edward Eng

Appellant

(Plaintiff)

And

David Wong

Respondent

(Defendant)

Before:

The Honourable Mr. Justice Groberman

The Honourable Mr. Justice Fitch

The Honourable Mr. Justice Grauer

On appeal from: An order of the Supreme Court of British Columbia, dated

February 2, 2018 (Eng v. Wong, New Westminster Docket S162429).

Oral Reasons for Judgment

The Appellant, appearing in person

(via videoconference):

E. Eng

Counsel for the Respondent

(via videoconference):

Z.C. Ng

Place and Date of Hearing:

Vancouver, British Columbia

May 19, 2020

Place and Date of Judgment:

Vancouver, British Columbia

May 20, 2020

Summary:

The plaintiffs brought an action against the defendant, alleging that he unlawfully detained and interfered with chattels that they stored on leased premises. The defendant contended that he was, at all times, acting as an agent for the landlord in requiring the plaintiffs to remove their chattels from an area that was not covered by the lease. The judge held for the defendant. In light of serious allegations of personal wrongdoing made by the plaintiffs, and in light of their failure to observe the Rules in respect of their filings, the judge awarded special costs. One of the plaintiffs appealed. Held: Appeal dismissed. The judge made no error in his findings. The special costs award was within his discretion. While the plaintiff's conduct of the appeal was far from appropriate, the existing costs order in the trial court is a sufficient rebuke. The Court declines to exercise its discretion to award special costs in respect of the appeal.

[1] GROBERMAN J.A.: Mr. Eng appeals from the dismissal of his claim on a summary trial, and from an award of special costs against him.

[2] Mr. Eng alleged that he stored certain machinery and other equipment on leased premises, and that Mr. Wong wrongfully detained those goods, and either unlawfully disposed of them, or converted them to his own use.

- [3] Mr. Wong contended that he was, at all material times, acting as an agent for the landlord. He says that he requested that Mr. Eng remove the chattels, because they were stored in an area of the premises outside of the area covered by Mr. Eng's lease. Mr. Eng initially refused to remove the items, so Mr. Wong moved them behind a partition wall. Eventually, Mr. Wong says, Mr. Eng removed the chattels and vacated the premises.
- [4] The summary trial application was brought by Mr. Eng. The judge acknowledged that it was not possible, based on affidavit evidence alone, to resolve the conflicting evidence as to what ultimately became of the chattels. He was, nonetheless, able to find sufficient facts to resolve the litigation. He made the following key findings:
- a) Mr. Wong was, at all times, acting as an authorised agent for the landlord;
 - b) Mr. Eng's lease did not cover the area in which the chattels were stored;
 - c) Mr. Wong gave Mr. Eng adequate notice to remove his chattels;
 - d) nothing that Mr. Wong did constituted trespass to goods or any other tort against Mr. Eng; and
 - e) to the extent that the Amended Notice of Civil Claim set out other claims, they were properly characterized as arising out of the lease, and could not be pursued against Mr. Wong, who was not a party to the contract.

Background

- [5] Mr. Eng, together with his son, Frank Eng, operated a business out of premises located on Vickers Way in Richmond, which premises were in a complex owned by Fortune Venture Management Ltd. ("Fortune Venture"). Mr. Eng initially leased premises there in 2008. In 2011, he and Frank Eng entered into a new lease, which covered a larger part of the premises, and included rights to renew the lease to extend it up to 2019.
- [6] The Engs stored machinery and other chattels in a part of the complex that was not expressly included in their lease. There was some evidence that other tenants also followed that practice, and the landlord appears to have acquiesced in the arrangement. While Mr. Eng acknowledged that the additional storage area was not mentioned in the written lease, and that he did not pay any additional rent in order to use it, he contended that it was the subject of a "verbal lease".
- [7] In 2012, Mr. Wong visited the Vickers Way property when he was looking for commercial premises to lease for his own roofing company. He met Matthew Chen, a director of Fortune Venture, who managed the complex. Although Mr. Wong quickly concluded that the buildings were not suitable for his own needs, Mr. Chen maintained contact with him, eventually advising him that Fortune Venture was interested in selling the premises.

- [8] Mr. Wong had friends who were interested in investing in commercial real estate. Their company, 0827535 BC Ltd., entered into discussions with a view to purchasing the premises from Fortune Venture. On February 29, 2012, the numbered company entered into an agreement of purchase and sale in respect of the Vickers Way property, with a completion date set for late December 2012. The numbered company ultimately assigned the right to purchase to a third party, and the vendor and purchaser extended the completion date. The completion ultimately took place on May 3, 2013.
- [9] In the days leading up to the signing of the purchase and sale agreement, Mr. Chen discussed with Mr. Wong the possibility of Mr. Wong assisting with renovations on the property, and with its management. The goal was to increase the rentable space and attract additional tenants.
- [10] It is not clear, on the evidence, that Mr. Wong's involvement was requested by the numbered company, but in an addendum to the agreement of purchase and sale, Fortune Venture expressly authorized Mr. Wong to manage the premises until the completion date.
- [11] In the spring of 2012, Mr. Wong notified the tenants that they were required to remove their chattels from the parts of the premises that were not included in their leases. His evidence was that most of the tenants complied but the Engs did not. They contended they were entitled to a 500 square foot area to store their chattels.
- [12] On June 26, 2012, Mr. Chen and Mr. Wong engaged a lawyer to write a letter to the Engs demanding that they remove their chattels from the unleased area by July 1, 2012. The letter said:

If not removed within the time delimited, unless you provide your written undertaking to have these removed by a mutually agreeable date and be responsible for payment of our costs, it will be assumed that such items are without value and we will have these removed and disposed of at your expense.

- [13] The Engs did not comply with the demand. In July, 2012, Mr. Wong began construction of a partition wall on the premises. The parties disagree on what happened to the Engs' chattels. Mr. Wong states that he left them where they were, behind the partition wall. He says that there was a door in the wall, and that he gave the Engs a key so that they could remove the goods. Mr. Eng, on the other hand, said that the partition wall prevented access to his chattels, and says that he "deemed them as being disposed by [Mr. Wong]" as of July 2012.
- [14] Mr. Eng says that he was given an opportunity to retrieve the chattels in February 2013, but refused to do so. Mr. Eng brought an action against Fortune Venture alleging breaches of his lease and interference with his chattels. The action was settled by agreements dated April 30 and May 1, 2013. The Engs agreed to vacate the premises within three months, and did so by June 2013. According to Mr. Wong, they removed their chattels at that time, leaving only debris. The Engs deny that they removed their chattels.

The Claim at Trial

[15] In 2014, the Engs brought their action against Mr. Wong. The trial judge described the plaintiffs' pleading in the following terms, which I would endorse as fair:

[The] Amended Notice of Civil Claim is prolix in the extreme, garbled, and at points incoherent. It is not in conformance with the Rules in that it fails to succinctly, in summary form, state a cause of action. It is a collection of argument, accusations, innuendo, and pleadings of evidence rather than fact.

[16] While the plaintiffs' claims were difficult to follow, they were, for the most part, concerned with alleged interference with the chattels. There were two important disputes between the parties. The first concerned whether Mr. Wong was authorized to act as an agent for Fortune Venture. He deposed that he was, and that fact was strongly supported by the Addendum to the Agreement for Purchase and Sale. Mr. Eng, however, contended that Mr. Wong was not an agent for Fortune Venture. In support of that view, he relied on a number of hearsay statements, as well as some remarks of the lawyer who wrote the June 2012 letter, who was examined for discovery before the action was discontinued as against him.

[17] The judge found that Mr. Wong was, at all material times, acting as an agent for Fortune Venture. He stated that "as far as admissible evidence goes, the evidence of Mr. David Wong, that he was acting on behalf of Fortune, is uncontroverted." Nothing in Mr. Eng's argument on appeal persuades me that the judge erred in making that finding. The evidence is, indeed, overwhelmingly to the effect that Mr. Wong was acting as a manager on behalf of Fortune Venture.

[18] If there was interference with the chattels, then, it was interference by Fortune Venture, not by Mr. Wong personally. Further, the settlements between Mr. Eng and Fortune Venture precluded the bringing of this lawsuit against Mr. Wong.

[19] The second major dispute concerned whether the Engs had a lease that covered the area where they stored their chattels. Apart from Mr. Eng's own suggestion that there was a lease, the only evidence produced by the plaintiffs was a translation of a letter, dated February 27, 2013, purportedly signed by one of the directors of Fortune Venture on behalf of the company, and by the Engs. It included the following statements:

It is a fact that Fortune Venture has included the use of 500 s.f. space by the lessee since May, 2011 until July 2012 by the lessee without payment of additional rent.

Fortune Venture hereby confirms Fortune Venture has not authorized Mathew Chen to illegally detain and to force remove all the machineries and chattels from the 500 s.f. space on the 2nd floor of Vickers Way on 5 July 2012. Fortune Venture has not authorized Mathew Chen to erect wall to prevent the lessee to access and to use the 500 s.f. space on 5 July 2012

[20] The judge found the letter to be of no evidentiary value:

- [22] This letter was purportedly signed by one of the principals behind Fortune Venture; but she does not describe how it came to be that Mr. Chen's delegation of management responsibilities to Mr. Wong on Fortune Venture's behalf was unauthorized, or that Mr. Chen's capacity to act on Fortune Venture's behalf was somehow restricted.
- [23] More fundamentally, the problem for the plaintiffs is that this letter is not a lease document, but instead is unsworn hearsay evidence, purporting to state, in hindsight, what the lease arrangement actually had been. As hearsay, it is presumptively inadmissible. There is no affidavit evidence before the Court from [the person who signed the letter] describing the circumstances of the lease. This letter itself, written seven months after the events in issue, cannot stand as evidence of a leasehold interest covering the additional space having contemporaneously been understood, as of July 2012, to be in existence.
- [24] The second problem with this letter is that it contradicts the lease document itself, which says that it is an entire agreement. The lease makes no reference at all to this additional space or permission to use the additional space. If there was a verbal agreement to extend the lease to include this additional space, there is no evidence of there having been fresh consideration given for such an extension or amendment of the lease. Therefore, the most I could find on the facts before me, even if there had been a verbal agreement allowing the plaintiffs to use the additional space, is that there was not a lease, but rather a license or permission given to the plaintiffs on behalf of the landlord, without consideration, for the plaintiffs to use that space. As such, it could have been revoked by the landlord at any time. And in fact, in the course of argument today Mr. Edward Eng conceded that that was in reality the situation with the space: that it was not a leasehold interest, but simply a license. That concession is a complete answer to the plaintiffs' allegation of Mr. Wong having interfered in their leasehold interest in the additional space.
- [21] Again, I am not persuaded that the judge made any error in coming to his conclusions. There was, shortly put, no evidence supporting the idea that the Engs had a lease over the additional storage area. To the extent that they had a licence, it was revocable, and they were furnished with adequate notice of its revocation.

The Appeal

- [22] On this appeal, Mr. Eng attempts to raise what he characterizes as additional arguments, and to tender what he describes as new evidence. The appeal material, like the original material, consists largely of unsupported contentions, hearsay statements, and convoluted argument. It does not advance the appellant's case.
- [23] The appellant attempted to file an entirely new written argument, as well as a lengthy summary of his affidavits on the business day immediately prior to this hearing. He has provided no adequate explanation for the late filing, nor any rationale for accepting fresh evidence on the appeal, or for allowing a written argument containing matters not addressed in his factum. Accordingly, we have not accepted the new material.

- [24] It is unnecessary to address the grounds of appeal directed at the detention of the plaintiff's chattels. As I have indicated, the judge made no errors in his findings in respect of that issue.
- [25] Mr. Eng points to certain isolated hearsay statements that taken out of context might suggest technical errors by the trial judge, but they do not, when fairly evaluated, support the contention that the judge made any improper findings.
- [26] Mr. Eng claims that the judge ought to have dealt with his other claims, including his claim that Mr. Wong appropriated a deposit with BC Hydro that properly belonged to Mr. Eng, that Mr. Wong's partition wall blocked a fire exit, and that the wall reduced the square footage of a leased area.
- [27] The claims in respect of the changes that the partition wall made to the premises were dealt with by the trial judge. As he indicated, they were claims arising out of the lease. They could be pursued only against the landlord. The plaintiff's claim against the landlord was settled, and is the subject of a consent dismissal order. These claims cannot be pursued against Mr. Wong personally.
- [28] The electrical meter issue was not proven on the evidence. There is a bare allegation by Mr. Eng that he paid a deposit of \$216 to BC Hydro and Mr. Wong consumed "the entire amount". There is insufficient detail to determine what actually occurred. As the amount in issue in respect of the meter is small, the issue does not merit further analysis.
- [29] The plaintiff also says that the judge should not have decided this matter on a summary trial. This is a curious position to take, given that the summary trial application was brought by the plaintiff. In any event, nothing in this case rendered it unsuitable for summary disposition. The judge was properly able to find such facts as were necessary to dispose of the litigation.
- [30] The appellant also says that special costs should not have been awarded at trial. A trial judge enjoys broad discretion to award special costs where there has been reprehensible conduct within the litigation: *Garcia v. Crestbrook Forest Industries Ltd.* (1994), 9 B.C.L.R. (3d) 242 (C.A.); *Smithies Holdings Inc. v. RCV Holdings Ltd.*, 2017 BCCA 177. In this case, the personal allegations against Mr. Wong included perjury and dishonesty. Further, the plaintiffs' materials were clearly not compliant with the Supreme Court Civil Rules, making the litigation unwieldy and inefficient. These matters are deserving of rebuke and justified an award of special costs.
- [31] In respect of this appeal, Mr. Wong has provided evidence of disrespectful emails sent to his counsel from Mr. Eng. As well, Mr. Eng's compliance with court rules has left much to be desired. That said, in my view the award of special costs of the trial stands as a sufficient rebuke. I would not, in this case, exercise discretion to also award special costs of the appeal.

[32] In the result, I would dismiss the appeal and affirm the trial judgment, including the judgment for special costs of the trial. With respect to the appeal, the respondent is entitled to party and party costs on scale 1.

[33] FITCH J.A.: I agree.

[34] GRAUER J.A.: I agree.

[35] GROBERMAN J.A.: The appeal is dismissed with costs of the appeal on a party-party scale on scale 1.

"The Honourable Mr. Justice Groberman"

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Prepared on 25 October 2026 · Esheria