

CANADA / JUDGMENT

Forsythe v. Columbia Basin Development Corp.

2020 BCSC 936

COURT

Supreme Court of British Columbia

DECIDED

23 June 2020

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2020 BCSC 936 Forsythe v. Columbia Basin Development Corp. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Forsythe v. Columbia Basin Development Corp., 2020 BCSC 936 Date: 20200623 Docket: 14037 Registry: Rossland Between: Terrence Forsythe and Carol Forsythe Plaintiffs And Columbia Basin Development Corp., Firebird Technologies Inc. also known as 5N Plus Trail Inc., also known as 5N Waneta Expansion General Partner Ltd. and Regional District of Kootenay District Defendants Before: The Honourable Mr. Justice Marchand Reasons for Judgment Counsel for the Applicants: D.W. Wu Counsel for the Defendants, Columbia Basin Development Corp., 5N Waneta Expansion General Partner Ltd. Waneta Expansion Power Corporation, Columbia Basin Trust and Columbia Power Corporation: T.J. Moran Place and Date of Hearing: Kamloops, B.C. June 22, 2020 Place and Date of Judgment: Rossland, B.C. June 23, 2020

Introduction

- [1] The plaintiffs own land in the Columbia Gardens Industrial Park in Trail, British Columbia. Their lands were flooded in March 2017 and threatened with floodwaters again in April 2018. The plaintiffs allege that the development of several neighbouring lots caused the floods.
- [2] On March 20, 2019, the plaintiffs filed the notice of civil claim. They named the owners of the neighbouring lots, namely Waneta Expansion General Partner Ltd. and Columbia Basin Development Corp. as defendants. The plaintiffs subsequently learned that: · Entities that were owned and controlled by Columbia Basin Trust and/or Columbia Power Corporation were involved in the development of the neighbouring lots; and · Waneta Expansion General Partner Ltd. no longer exists and was amalgamated with a number of other companies to form Waneta Expansion Power Corporation.
- [3] As a result, the plaintiffs have applied to: · Add Columbia Basin Trust and Columbia Power Corporation as defendants; · Replace Waneta Expansion General Partner Ltd. as a defendant with Waneta Expansion Power Corporation; and · Make necessary ancillary orders to amend the notice of civil claim and the style of proceeding.

- [4] As a matter of convenience, the plaintiffs have also applied to move the proceeding to the Vancouver Registry.
- [5] Columbia Basin Development Corp., Waneta Expansion General Partner Ltd. and the proposed new defendants are represented by the same counsel. They take no position on the plaintiffs' applications to add Columbia Basin Trust and Columbia Power Corporation as defendants, and to amend the notice of civil claim and style of cause. They consent to orders replacing Waneta Expansion General Partner Ltd. as a defendant with Waneta Expansion Power Corporation and to moving the proceeding to the Vancouver Registry.

Analysis

- [6] Parties can be added under Rule 6-2(7)(b) if the court decides the person ought to have been joined as a party or the person's participation in the proceeding is necessary to ensure that all matters may be effectually adjudicated. Parties can also be added under Rule 6-2(7)(c) if there may exist, between the person and any other party, a question or issue related to or connected with the relief claimed in the proceeding or the subject matter of the proceeding. To make an order under either Rule 6-2(7)(b) or (c), the court must be satisfied that it is just and convenient to do so.
- [7] In this case, the plaintiffs meet the requirements under both Rules.
- [8] Columbia Basin Trust and Columbia Power Corporation have a direct interest in the outcome of the litigation. The plaintiffs claim that they are directly liable to the plaintiffs in negligence and nuisance on the basis of their asserted knowledge and decision-making authority regarding drainage on the neighbouring properties. The plaintiffs claim general, punitive and aggravated damages as well as injunctive relief against them. They ought to have been joined as parties at the outset, and presumably would have been if the plaintiffs had been aware of their involvement at the time.
- [9] Further, adding Columbia Basin Trust and Columbia Power Corporation as parties is necessary to ensure the effective adjudication of the issues. In particular, discovery of Columbia Basin Trust and Columbia Power Corporation will be important to the plaintiff's prosecution of their claim.
- [10] In addition, there are clearly multiple issues relating to the plaintiffs' claims that exist between Columbia Basin Trust and Columbia Power Corporation on the one hand and the plaintiffs on the other.
- [11] Finally, in my respectful view, adding Columbia Basin Trust and Columbia Power Corporation as parties is just and convenient. In this case, there appears to be no prejudice to them and the value of adding them to ensure the effective adjudication of the issues outweighs any potential prejudice. In fact, there does not appear to be a limitation issue that would give rise to actual or presumed prejudice. Notably, none of the existing or proposed defendants asserts prejudice and none opposes the granting of the order sought. Order

[12] For all of these reasons I make the following orders:

1. Columbia Basin Trust and Columbia Power Corporation are added as parties.
2. By consent, the defendant Waneta Expansion General Partner Ltd. is removed and replaced with Waneta Expansion Power Corporation.
3. By consent, the proceeding will be moved to the Vancouver Registry.
4. The plaintiffs have leave to amend the notice of civil claim as attached at Appendix A to the plaintiffs' notice of application filed on May 29, 2020.
5. The style of cause will be amended to reflect the terms of this order. MARCHAND J.

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Prepared on 26 October 2026 · Esheria