

CANADA / JUDGMENT

Gilbert-Hrimech v. BC Transit

2021 BCSC 2538

COURT

Supreme Court of British Columbia

DECIDED

6 October 2021

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2021 BCSC 2538 Gilbert-Hrimech v. BC Transit IN THE SUPREME COURT OF BRITISH COLUMBIA
Citation: Gilbert-Hrimech v. BC Transit, 2021 BCSC 2538 Date: 20211006 Docket: S120046 Registry: Kelowna Between: Sami Gilbert-Hrimech, Elshadaie Solomon Plaintiffs And BC Transit, Trail Transit Services Inc., Sherry Denise McCuaig, Trevor Stach, Sharman Thomas, and Danielle Harriott Defendants Before: The Honourable Mr. Justice G.C. Weatherill Oral Reasons for Judgment The Plaintiff, Sami Gilbert-Hrimech, appearing on his own behalf via telephone conference: S. Gilbert-Hrimech Counsel for the Defendants, appearing via telephone conference: D.J. Kautz No other appearance Place and Date of Hearing: Kelowna, B.C. October 6, 2021 Place and Date of Judgment: Kelowna, B.C. October 6, 2021

- [1] THE COURT: The plaintiffs seek an order allowing them an unfettered examination of the computer and computer systems of BC Transit and Trail Transit Services Inc. as well as the right to retrieve data from those systems by a forensic computer expert, all at the cost of the defendants. The forensic computer expert is unnamed and the individual's qualifications are not provided.
- [2] The basis for the order being sought is that, during an examination for discovery by the plaintiffs of the defendant, Danielle Harriott (who at material times was and I believe still is the Regional Transit Manager for BC Transit), Mr. Gilbert-Hrimech asked a series of questions and obtained answers that led him to believe that an e-mail had been sent by Ms. Harriott to a transit supervisor named Sharman Thomas which has not been produced. Mr. Gilbert-Hrimech submits that, because that supposed email has not been produced, there are likely others that are also being hidden by the defendants.
- [3] I have examined the transcript of the examination for discovery and have been unable to discern a cogent basis for Mr. Gilbert-Hrimech's belief.
- [4] It will be the task of the trial judge to make assessments of credibility and to determine whether or not anybody has been, to use Mr. Gilbert-Hrimech's term, "lying". But the order sought, in my view, is out of all proportion to the evidence presented. Simply put, the order sought is not warranted. The application is dismissed. [PROCEEDINGS NOT TRANSCRIBED]

- [5] THE COURT: I have read your notice of application and the legal basis upon which you have presented it, and I asked you whether or not you had anything further. You said, "No". [PROCEEDINGS NOT TRANSCRIBED]
- [6] THE COURT: I have made my decision on that particular portion of the application.
- [7] We will now move to the next order you are seeking, which is that you are seeking production of the contract between BC Transit and Trail Transit. [PROCEEDINGS NOT TRANSCRIBED]
- [8] THE COURT: Having heard your submissions and having read your application materials, it is my view that the order you are seeking is disproportionate to the basis upon which you seek to justify it. There is nothing I have seen or heard that convinces me the order that you are seeking, namely unfettered access to and a full examination of BC Transit's and Trail Transit's computer systems is warranted. [PROCEEDINGS NOT TRANSCRIBED]
- [9] THE COURT: Well, I am not here to give you legal advice, Mr. Gilbert-Hrimech. [PROCEEDINGS NOT TRANSCRIBED]
- [10] THE COURT: There are mechanisms available to you under the Rules. In my view, the order that you are seeking in this case is simply not warranted. You have my decision. [PROCEEDINGS NOT TRANSCRIBED]
- [11] THE COURT: I have read the response filed by Mr. Kautz on behalf of the defendants. I am in agreement with everything set out in that response with respect to this issue. [PROCEEDINGS NOT TRANSCRIBED]
- [12] THE COURT: Mr. Gilbert-Hrimech, you have my decision. I have read your materials, I heard what you said this morning, as difficult as it was because of the communication issue. I have read the response filed by the defendants, and I am simply not in agreement with you that you ought to be entitled to a complete, unfettered access to BC Transit's and Trail Transit's computer systems. [PROCEEDINGS NOT TRANSCRIBED]
- [13] THE COURT: Now, I accept that you believe that the defendants have not been telling the truth. [PROCEEDINGS NOT TRANSCRIBED]
- [14] THE COURT: No, be careful here. What I said was I accept that you believe they are not telling the truth. The determination as to whether in fact they are telling the truth or not will be up to the trial judge.
- [15] Mr. Kautz, who is counsel for the defendants, is a lawyer who understands his professional duties and responsibilities. He has responded to the request you have made. If you believe there are relevant documents that have not been produced, make the request. You will get a response.
- [16] The response so far is that the documents you seek do not exist. You will just have to be content with that.

- [17] For what it is worth, Mr. Gilbert-Hrimech, the basis upon which you have derived your view that people are lying to you is not one that I, as a judge who hears many of these cases, would agree with. [PROCEEDINGS NOT TRANSCRIBED]
- [18] THE COURT: It will be up to the trial judge to determine whether or not it is true. [PROCEEDINGS NOT TRANSCRIBED]
- [19] You have my decision, Mr. Gilbert-Hrimech. You are not getting an order from me entitling you to have complete access to all of BC Transit's and Trail Transit's computer system. [PROCEEDINGS NOT TRANSCRIBED]
- [20] THE COURT: As I understand it, you are also looking to have the costs of the examinations for discovery of Sharman Thomas and Daniel Harriott paid by the defendants. And the basis upon which you say you are entitled that order is what? [PROCEEDINGS NOT TRANSCRIBED]
- [21] THE COURT: Well, whether or not they committed perjury will be something for the trial judge to decide, not you. There is no basis for an order that the examinations for discovery be paid for in advance of trial. That is something that is in the discretion of the trial judge after he or she hears all of the evidence. At that time, not before, there will be a determination as to who is entitled to costs. [PROCEEDINGS NOT TRANSCRIBED]
- [22] THE COURT: There may be a completely reasonable explanation for Mr. Thomas having deposed in his examination for discovery that there would be a complaint in the bus driver's employment file yet no such complaint having been found. To leap to the conclusion, as you appear to have done, that because the complaint was not in the documents you received, somebody is committing perjury is, at this particular juncture, unjustified.
- [23] Simply because you have formed the view that people have committed perjury on their examination for discovery does not warrant an order that costs be awarded to you for the examinations for discovery. That application is dismissed. [PROCEEDINGS NOT TRANSCRIBED]
- [24] THE COURT: Mr. Gilbert-Hrimech, I am not granting an order that the defendants pay the costs of these examinations for discovery. That is something for the trial judge to determine after the trial. If the trial judge is persuaded that somebody was not telling the truth, then there are mechanisms available to him or her to deal with the situation, including an award of costs. But that is for the trial judge to decide. [PROCEEDINGS NOT TRANSCRIBED]
- [25] THE COURT: Let us move now to the next order you are seeking, which is further examinations for discovery of Sharman Thomas and Daniel Harriott; again, at the defendants' cost. [PROCEEDINGS NOT TRANSCRIBED]

- [26] THE COURT: Well, again, as I have tried to make clear, whether or not false answers were given during the examinations for discovery will be for the trial judge to determine after hearing from you, and after hearing from them, and after hearing from counsel.
[PROCEEDINGS NOT TRANSCRIBED]
- [27] THE COURT: I am not satisfied that a case has been made out for further discovery of Mr. Thomas or Ms. Harriott. That application is dismissed. [PROCEEDINGS NOT TRANSCRIBED]
- [28] THE COURT: Finally, you are seeking an order adding Nigel Couch (phonetic), Johnathan Dyck (phonetic), Elizabeth Hofren (phonetic), Leslie Sadler (phonetic) and Kevin Shubert (phonetic) be added as defendants on the basis that they conspired in some fashion.
[PROCEEDINGS NOT TRANSCRIBED]
- [29] THE COURT: You have not pleaded conspiracy. [PROCEEDINGS NOT TRANSCRIBED]
- [30] THE COURT: What are the facts that you allege, or wish to allege that would support these serious allegations. [PROCEEDINGS NOT TRANSCRIBED]
- [31] THE COURT: Are you abandoning this particular claim? Do you wish me to rule on it?
- [32] PLAINTIFF GILBERT-HRIMECH: I'm -- I'm abandoning it.
- [33] THE COURT: All right. All right, I think that covers all of the orders that were sought. Mr. Kautz, do you have anything to add? [PROCEEDINGS NOT TRANSCRIBED]
- [34] THE COURT: Well, again, this is relatively typical of what happens when litigants bring applications for various orders that are dismissed. The question for the judge hearing the applications is whether there should be an award of costs for the application because the application is now over. The question is whether there was any merit to the applications, whether they should have been brought at all, and whether there was justification for the defendants having to have taken the time, energy and expense to respond to them.
- [35] Mr. Gilbert-Hrimech, Mr. Kautz has submitted that since the applications you brought were either abandoned or dismissed, there should be costs ordered against you in any event. So that is what I am seeking to have your thoughts on. [PROCEEDINGS NOT TRANSCRIBED]
- [36] THE COURT: Again, if you wish to examine for discovery a representative of one or more of the corporate defendants, and the corporate defendant does not agree to put forward the person you have named, you have remedies. You can apply for an order that the person you have named be produced.
- [37] What has happened here is that you have named the chief executive officer of BC Transit as the person that you wish to examine on behalf of the corporate defendant in the context of a claim arising out of an altercation that took place on one of the buses operated by Trail Transit Services. The lawyer for BC Transit takes the position that the chief executive officer is the appropriate person. If you disagree with him, you can bring an application.
[PROCEEDINGS NOT TRANSCRIBED]

- [38] THE COURT: If there are documents that Mr. Gilbert-Hrimech believes are relevant and you agree that are relevant and are in possession or control of the defendants, they obviously will be produced, but that is something the two of you can deal with offline. But again, I am dealing with the question of costs. [PROCEEDINGS NOT TRANSCRIBED]
- [39] THE COURT: All right, thank you. Having heard the submissions on costs from the parties, it is my view that there was no basis for this application. There was no legitimate reason why it was brought. I am granting costs in favour of the defendants in any event of the cause at Scale B, payable forthwith.
- [40] Mr. Kautz, I am not at this time inclined to make the further order that you are seeking, which is that there will be no further applications until this costs award is paid. We will see how things go.
- [41] And if this or other cost awards are not paid forthwith as required, then that is something that the judge hearing that application will consider. All right. Is there anything further?
- [42] CNSL D. KAUTZ: Thank you, My Lord.
- [43] THE COURT: Mr. Kautz, is there anything further?
- [44] CNSL D. KAUTZ: No, My Lord, thank you.
- [45] THE COURT: And Mr. Gilbert-Hrimech, is there anything further?
- [46] PLAINTIFF GILBERT-HRIMECH: [NO RESPONSE]
- [47] THE COURT: For the record, it appears that Mr. Gilbert-Hrimech has hung up. I am not sure that he heard my order regarding costs, but Mr. Kautz, if you are still on the line, if you could communicate that order to him.
- [48] CNSL D. KAUTZ: Yes. We will send him a letter with the costs as set out.
- [49] THE COURT: All right, very good. Thank you.
- [50] CNSL D. KAUTZ: Thank you. "G.C. Weatherill J."

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