

CANADA / JUDGMENT

Global Fleet Management Inc. v. Deltaura Canada Inc.

2020 BCSC 1938

COURT

Supreme Court of British Columbia

DECIDED

8 December 2020

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2020 BCSC 1938 Global Fleet Management Inc. v. Deltaura Canada Inc. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Global Fleet Management Inc. v. Deltaura Canada Inc., 2020 BCSC 1938 Date: 20201208 Docket: S207961 Registry: Vancouver Between: Global Fleet Management Inc. Plaintiff And Deltaura Canada Inc. Defendant Before: The Honourable Madam Justice Francis On appeal from: An order of the Deputy District Registrar, dated October 29, 2020 (Global Fleet Management Inc. v. Deltaura Canada Inc., Vancouver File No. S207961). Reasons for Judgment Counsel for the Plaintiff: C. Rempel Counsel for Defendant: No Appearance Place and Date of Trial/Hearing: Vancouver, B.C. December 2, 2020 Place and Date of Judgment: Vancouver, B.C. December 8, 2020

- [1] On December 2, 2020, this matter came before me in chambers. It was accompanied by an application in a different proceeding in which the same relief was sought by the same counsel (City Gate Capital Corporation v. Bertram Capital Finance Inc. et. al., Vancouver Registry No. S-207570). I granted the applicant the relief sought in both proceedings, with reasons to follow in this action. These are my reasons for judgment.
- [2] The plaintiff is a British Columbia corporation in the business of GPS tracking systems and associated software for commercial fleet vehicles. The defendant is a commercial freight and logistics company.
- [3] On August 11, 2020, the plaintiff filed a notice of civil claim against the defendant for breach of two client services agreements. The total amount claimed on the basis of unpaid fees owing to the plaintiff was \$54,029.28, plus interest.
- [4] In the notice of civil claim, the relief sought in Part 2 is:
- a) Judgment in the amount of \$54,029.28.
 - b) In the alternative, damages for unjust enrichment in the amount of \$54,029.28.
 - c) Contractual interest at the rate of 60% per annum, or, in the alternative, pursuant to the Court Order Interest Act, R.S.B.C. 1996, c. 79.

- d) Costs.
 - e) Such further and other relief as this Honourable Court deems appropriate.
- [5] The defendant was properly served with the notice of civil claim, but did not file a response to civil claim within the time required by the rules, or at all.
- [6] On October 6, 2020, the plaintiff applied for default judgment.
- [7] On October 29, 2020, the Deputy District Registrar rejected the plaintiff's application. One of the reasons for the rejection of the plaintiff's application was that "a claim in the Notice of Civil Claim for a liquidated demand coupled with an alternative claim not for a liquidated demand cannot support a default judgment". In support, the Deputy District Registrar cited *Thom v. Grainger*, [1999] B.C.J. No. 3124 (S.C.).
- [8] The plaintiff appeals the decision on the grounds that the Deputy District Registrar erred in law by relying on *Thom*. The plaintiff submits that the court's decision in *Thom* was based on an interpretation of Rule 17(3) of the former Supreme Court Rules, B.C. Reg. 221/90 [Rules of Court]. Rule 3-8 of the Supreme Court Civil Rules, B.C. Reg. 168/2009 [Supreme Court Civil Rules], the successor to Rule 17 of the Rules of Court, contains different language with respect to the circumstances under which default judgment will be available. As such, the plaintiff argues that default judgment ought to have been granted in this case.
- Jurisprudence under Rule 17 of the Rules of Court
- [9] In *Thom*, the defendants argued that the claim against them was not susceptible to default judgment because, in addition to a claim for liquidated damages, the plaintiffs had pled in the alternative that they were entitled to restitution.
- [10] At the time *Thom* was heard, Rule 17 of the Rules of Court applied to default judgments in this province. Rule 17(3) provided that:
- (3) Where the plaintiff's claim against a defendant is solely for recovery of a debt or liquidated demand, the plaintiff may enter final judgment in Form 86 against that defendant for a sum not exceeding that claimed, interest if entitled and costs, and may proceed with the action against any other defendant.
- [11] Because Rule 17(3) stated that default judgment could be obtained only on a claim that was "solely" for the recovery of a debt or a liquidated amount, Justice Fraser held that a plaintiff could not obtain default judgment under that Rule if they had pled non liquidated claims in the alternative. In reaching his decision, Fraser J. held that he was bound by the decision of our Court of Appeal in *Stokes Exploration Management Ltd. v. Advance Geophysics Ltd.*, [1972] 1 W.W.R. 197 (B.C.C.A.) [*Stokes*]. In that case, the plaintiff sued for a liquidated amount and, in the alternative, made a claim of quantum meruit. The applicable rule in force at the time was substantially similar to Rule 17 of the Rules of Court. In *Stokes*, the Court of Appeal held that default judgment was not available to the plaintiff because the claim was not only for a debt or liquidated amount.

- [12] Thom was considered in 2009 by Mr. Justice Butler, then of this Court, in *Wesbild Holdings Ltd. v. Sports for All Management Ltd.*, 2009 BCSC 1108 [Wesbild]. In that case, the plaintiff sued the defendant for a debt in a specified amount, and in the alternative claimed in quantum meruit. After the registrar refused to grant an order for judgment in default, relying on Thom, the plaintiff asked Butler J. to reconsider the holding in Thom.
- [13] The plaintiff in *Wesbild* argued that Rule 17(7) of the Rules of Court permitted default judgment to be given in the context of a notice of civil claim in debt or for liquidated damages, with alternative non-liquidated claims. Rule 17(7) governed the availability of default judgment in actions in which more than one cause of action was asserted:
- (7) Where the plaintiff's claim against a defendant includes one or more of the claims referred to in subrule (3), (5) [unliquidated damages] or (6) [detention of goods] and another claim, the plaintiff may enter against that defendant judgment, in respect of any claim, as the plaintiff would be entitled to enter under those subrules if that were the plaintiff's only claim, and may proceed with the action against that defendant and any other defendant.
- [14] Justice Butler did not accept the plaintiff's argument, and held that a plaintiff's right to seek default judgment with respect to multiple claims, as provided in Rule 17(7), was only engaged when liquidated and non-liquidated claims were advanced not as alternative claims, but as additional claims in the same proceeding. Consequently, Butler J. determined that Thom was correctly decided and declined to grant default judgment.
- [15] It is therefore clear that if Rule 17 of the Rules of Court applied, the plaintiff in this case would not be entitled to default judgment because it has made a claim for liquidated damages, with an alternative claim for non-liquidated relief. Rule 3-8 of the Supreme Court Civil Rules
- [16] The Supreme Court Civil Rules came into force in 2010, after *Stokes*, *Thom*, and *Wesbild* were decided. The new rule governing default judgment is Rule 3-8. Rule 3-8(3) states:
- (3) If the plaintiff's action against a defendant includes a claim for recovery of money in a specified or ascertainable amount, the plaintiff may
- (a) on that claim, obtain judgment in Form 8 against that defendant for an amount not exceeding the total of
- (i) the amount claimed, (ii) the interest, if any, to which the plaintiff is entitled, and (iii) costs, and
- (b) proceed against one or more of the defendants, including the defendant against whom judgment was obtained, on any other claims brought in the action that are not barred as a result of the judgment referred to in paragraph (a).

- [17] In *Trustees of the Interior Lumbermen's Pension Plan v. Moore*, 2016 BCSC 89, Justice G.C. Weatherill considered Rule 3-8(3) and held that it was clear that a party may obtain default judgment on a claim for money that is in a specific ascertainable amount, and that the Supreme Court Civil Rules do not preclude a party from doing so where the claim is coupled with a claim in the alternative.
- [18] I agree with Weatherill J. and add the following two points:
- a) Where the former rule referred to a claim "solely for recovery of a debt or liquidated demand", Rule 3-8(3) refers to an action that "includes a claim for recovery of money in a specified or ascertainable amount". The language in the old rule is exclusive; the language in Rule 3-8(3) is inclusive.
 - b) The case authorities that have prohibited default judgment in circumstances of alternative pleadings are all grounded in the specific language of rules that are no longer in force. *Stokes* was decided on the basis of the interpretation of the applicable Rule, which at that time allowed a plaintiff to take default judgment if "the plaintiff's claim be only for a debt or liquidated demand" (emphasis added). Rule 17(3), which was in effect when the court determined *Thom and Wesbild*, allowed default judgment if the claim was "solely for recovery of a debt or liquidated demand" (emphasis added).
- [19] As Fraser J. remarked in *Thom*, procedural jurisprudence is in a continuous process of moving away from technicality: at para. 6. Proportionality and pragmatism are hallmarks of the changes that were introduced with the advent of the Supreme Court Civil Rules. This is reflected in Rule 1-3 which states that the object of the Rules is to secure the just, speedy, and inexpensive determination of every proceeding on its merits.
- [20] There is no principled basis for disentitling a plaintiff from obtaining default judgment for a liquidated claim simply because they have pled alternative relief. The change to the language of the default judgment rule under the Supreme Court Civil Rules reflects this.
- [21] As a result, I have ordered that default judgment may be granted against the defendant in this case. "Francis, J."

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