

CANADA / JUDGMENT

Green Light Solutions Corp. v. Baker

2020 BCSC 1812

COURT

Supreme Court of British Columbia

DECIDED

4 September 2020

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2020 BCSC 1812 Green Light Solutions Corp. v. Baker

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Green Light Solutions Corp. v. Baker,

2020 BCSC 1812

Date: 20200904

Docket: S1910657

Registry: Vancouver

Between:

Green Light Solutions Corp.

Plaintiff

And

Gordon Baker and Innasmat Lynx Inc.

Defendants

Before: The Honourable Mr. Justice Giaschi

Oral Reasons for Judgment

In Chambers

(via teleconference)

Counsel for the Plaintiff:

S. Nelligan

Counsel for the Defendants:

S. Lemke

Place and Date of Hearing:

Vancouver, B.C.

September 4, 2020

Place and Date of Judgment:

Vancouver, B.C.

September 4, 2020

- [1] THE COURT: These are my oral reasons for judgment. I reserve the right to amend these reasons for grammar and clarity, and to include full citations and quotations, but the result will not change as a consequence of any such amendments.
- [2] There are two applications before me: one by the plaintiff for summary judgment against the defendant Gordon Baker, Q.C., and one by Mr. Baker for a summary dismissal of the plaintiff's claim.
- [3] The amount at issue is not large, being \$40,000. This undoubtedly explains why the parties have not conducted examinations for discovery and wish the matter to be determined summarily.
- [4] Many of the facts are not in dispute. The plaintiff and defendant, Innasmat Lynx Inc. ("Lynx"), entered into an agreement on May 1, 2019 ("the loan agreement"), pursuant to which Lynx was to loan USD \$3,000,000 to the plaintiff. The loan agreement was subject to a condition precedent that a single creditor insurance policy be obtained. The loan agreement also provided that the plaintiff was to pay a deposit of USD \$30,000. The deposit was to be paid to Mr. Baker in trust and was stated to be refundable in the event that various conditions were not met. Once the conditions were met, the deposit was no longer refundable and was to be used to pay the fees for the single creditor insurance policy that was to be obtained.
- [5] It is noteworthy that Mr. Baker is not a party to the loan agreement, had no involvement whatsoever with the negotiation or drafting of the loan agreement, and was not even aware of its existence until September of 2019. Mr. Baker's involvement in this matter arose because he was asked, on April 2, 2019, by Phillip Knight to incorporate Lynx, which he did. He was also the first director of Lynx. Mr. Baker's next involvement was on May 2, 2019, when he was advised by Mr. Knight that he would be receiving funds into his trust account from the plaintiff. Mr. Baker deposes that he inquired of Mr. Knight "whether there was any hold on the funds", to which Mr. Knight replied "there was not".

- [6] Pursuant to the terms of the deposit clause of the loan agreement, on May 2, 2019, the plaintiff transferred by wire the sum of CAD \$40,000, being the equivalent of USD \$30,000, to Mr. Baker. It is undisputed that this amount was received into Mr. Baker's trust account.
- [7] Mr. Baker deposes that he received instructions from his client, Lynx, to remit the deposit monies, which he did. His banking records show that on May 3, 2019, there were two transfers from his trust account, one in the amount of \$37,000 to "customer" and one in the amount of \$3,000 to a new private banking account number.
- [8] The condition precedent to the loan agreement, being the obtaining of a single creditor insurance policy, was never satisfied and the loan between the plaintiff and Lynx did not materialize. As a consequence, the deposit was and remained refundable to the plaintiff. Therefore, by letters dated July 11, 2019 and August 12, 2019, the plaintiff demanded the return of the deposit of \$40,000. The deposit was never returned.
- [9] The plaintiff commenced this action on September 24, 2019 against Lynx and Mr. Baker. Mr. Baker filed a defence to the action but Lynx did not. On December 17, 2019, the plaintiff obtained default judgment against Lynx, which judgment I am advised has not been paid.
- [10] The plaintiff pleads and submits that Mr. Baker was a trustee under the terms established by the loan agreement and that he breached the terms by paying the deposit to persons other than the plaintiff. Mr. Baker submits that there was no trust established by the loan agreement, that, in any event, he was not a trustee of the plaintiff, and that he was, therefore, not in breach of trust when he paid the monies out of trust as directed by his client Lynx.
- [11] I have been referred to several authorities by the plaintiff. I intend to refer only to *Royal Bank of Canada v. Fogler, Rubinoff*, 1991 CanLII 7071 (O.N.C.A.) [Fogler], a decision by the Ontario Court of Appeal which is particularly apt. The case concerned the receipt by a law firm of trust funds from a lender. The law firm was told by its client of the purpose of the trust funds it would receive. The relationship between the client and the lender deteriorated, as did the relations between the client and the law firm. The law firm eventually resigned as the client's lawyer and disbursed the funds held in trust to pay outstanding legal fees, with the balance going to the client. The lender in the case sought and obtained judgment against the law firm for breach of trust.
- [12] Mr. Baker correctly submits that there is an important distinguishing fact in *Fogler* that is not present in this case, namely, the lawyer in *Fogler* had some knowledge that the money was only to be used for certain purposes. Notwithstanding this distinguishing fact, the case is, nevertheless, relevant for the general principles it contains. Most significantly, at para. 38, the Court stated that the lawyer, being uncertain as to the exact nature of the trust, had an obligation to make inquiries of the lender to ascertain the manner in which he could deal with the funds.

38 As has been noted, the monies came into the hands of the law firm by way of a draft drawn on the bank in favour of the law firm in trust. Putting Bain's evidence at its highest, and apart from the finding of the trial judge as to his specific knowledge, Bain was uncertain as to the exact nature of the trust. That being so, before taking title he was, in my opinion, obliged to make inquiries of the bank in order to ascertain the manner in which he could deal with the moneys. [Emphasis added.]

[13] At para. 39, the Court quoted with approval from Waters, D.W.M., *The Law of Trusts in Canada*, 2nd ed. (Toronto: Carswell, 1984), where the learned authors also state that there is an obligation on the part of a trustee to make inquiries if there are suspicious circumstances.

39 Waters, *Law of Trusts in Canada*, 2d ed. (Toronto: Carswell, 1984), puts this proposition, at p. 401, as follows:

It is what he actually knows or ought as an honest, reasonable man to have known. Though he does not have actual or imputed knowledge (and such knowledge would, of course, bind him), an honest, reasonable man would make enquiries if there are suspicious circumstances surrounding property which is proffered to him, whether or not in the course of trade. Before he becomes the title holder, he wants to know that he is entitled both to take title and to deal with the property as he thinks fit. Each of these types of person is liable as a constructive trustee, whether or not he himself benefited by administering property as a trustee de son tort or on joining in a trustee's fraudulent and dishonest design. However, if the person challenged as having done either of these things has benefited personally, the courts are likely to examine his state of mind even more scrupulously than when he has not. And, whether or not he has benefited personally, the burden of proof is upon the person challenged to show that, given the circumstances, enquiries by him were not called for or would not have revealed the true state of affairs. This is because the law imposes an objective test of knowledge upon the stranger who has intermeddled, and he must show that he did not fail that test. [Emphasis added.]

[14] At para. 40 of Fogler, the Court confirmed that the law firm had a legal duty to make inquiries if it was uncertain as to the nature of the relationship between its client and the lender, and held that if such inquiries had been made, the law firm would have ascertained that the trust funds were impressed with conditions. The information that could have been obtained was imputed to the law firm.

40 Had the respondent made the inquiries which I think it was under a legal duty to make, if it were uncertain as to the true nature of the relationship between the bank and Kalen, such inquiries would have confirmed that the subject funds were indeed trust funds and neither available to Kalen personally nor for the payment of Kalen's legal fees and disbursements. The information that could have been obtained by such inquiries is imputed to the respondent.

[15] In my view, these principles apply equally here. Notwithstanding the submissions of Mr. Baker, I find that Mr. Baker was a trustee for the plaintiff. The loan agreement clearly states that the funds were being paid to Mr. Baker, in trust. This established the trust. The balance

of clause 2 of the loan agreement makes it clear that the funds were refundable to the plaintiff if certain conditions were not met. I accept that Mr. Baker was not aware of the terms of the loan agreement, however, he was aware that he was receiving funds from the plaintiff and that these funds were being paid into his trust account. He was also aware that he, in fact, received funds from the plaintiff and he accepted those funds into his trust account. By doing so he became a trustee to the plaintiff as well as Lynx.

- [16] Mr. Baker was unaware of the purpose of the trust or the terms upon which he was to hold the funds in trust. This put him in the exact same position as Mr. Bain in the Fogler case. Being unsure of the terms of the trust, Mr. Baker had an obligation to make reasonable inquiries. However, the only inquiry Mr. Baker made was to Mr. Knight, and that inquiry was limited to whether there was any hold on the funds. In my view that was not sufficient. As in Fogler, he had a duty to make inquiries of, and ought to have made inquiries of the person who remitted the funds to his trust account, the plaintiff. He made no such inquiries. At a minimum, he ought to have made further inquiries of Mr. Knight as to why the plaintiff was transferring trust funds to him. The very fact the plaintiff was transferring funds to his trust account was an indication that there were terms attached to the holding of the funds. He should have been suspicious of Mr. Knight's response that there was no hold on the funds. If Mr. Baker had made proper inquiries, he would have learned of the terms of the loan agreement and the trust conditions applicable to the funds accepted. As was said in Mann (Re), 2015 LSBC 48, "... lawyers handling trust funds must be meticulously scrupulous."
- [17] Therefore, in my opinion Mr. Baker is liable to the plaintiff for breach of trust and I award the plaintiff damages of \$40,000 plus interest in accordance with the Court Order Interest Act, R.S.B.C. 1996, c. 79, calculated from September 1, 2019.
- [18] Mr. Baker's application is dismissed.
- [19] The plaintiff is to have its costs of this action.
- [20] Counsel, are there any submissions as to whether that should be a lump sum award?
- [SUBMISSIONS BY COUNSEL RE COSTS]
- [21] THE COURT: All right. Then the plaintiff is to have its costs of this action to be assessed.
- "Giaschi J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/20/18/2020BCSC1812.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/green-light-solutions-corp-v-baker-2020>

Prepared on 25 October 2026 · Esheria