

CANADA / JUDGMENT

Grenier v. Williams

2020 BCSC 1827

COURT

Supreme Court of British Columbia

DECIDED

26 November 2020

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2020 BCSC 1827 Grenier v. Williams

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Grenier v. Williams,

2020 BCSC 1827

Date: 20201126

Docket: S202044

Registry: New Westminster

Between:

Stacey Ellen Grenier

Plaintiff

And

Stanley Norman Williams

Defendant

Before: The Honourable Mr. Justice Schultes

Ruling on Costs

Date of Plaintiff's Submissions:

April 23, 2020

Date of Defendant's Submissions:

May 19, 2020

Place and Date of Judgment:

New Westminster, B.C.

November 26, 2020

Introduction

- [1] Following a trial, I found that the defendant Stanley Williams had breached an agreement to repay the plaintiff, his daughter Stacey Grenier, the \$20,000 that she had loaned him to make up the down payment on his purchase of her and her husband's former home, after it had been foreclosed on. I awarded her damages that totalled \$31,920. I also found that Ms. Grenier's husband Murray had committed the torts of assault and battery against Mr. Williams when confronting him about the debt. I awarded Mr. Williams what I described as "fairly nominal" damages of \$500, and ordered Mr. Grenier to have no contact with Mr. Williams and not to attend any place that he knows to be Mr. Williams's personal residence. The neutral citation for the Reasons for Judgment is 2020 BCSC 462.
- [2] In relation to costs, I said the following:
- [98] Both parties have succeeded in proving their claims. However, they also both recovered amounts that are within the jurisdiction of the Provincial Court (\$35,000 at the time the actions were filed). As a result, pursuant to Rule 14-1(10) of the Supreme Court Civil Rules, they are not entitled to receive costs other than disbursements, unless they demonstrate that there was nonetheless "sufficient reason for bringing the proceeding in the Supreme Court".
- [3] I gave the parties the opportunity to make written submissions if they took the position that costs should be awarded.

Plaintiff's Submissions

- [4] Although the case for the plaintiff was argued at trial solely on the basis of a breach by Mr. Williams of a loan agreement, Ms. Grenier points out that the Notice of Civil Claim also included claims for declarations that Mr. Williams was "holding the Loan as Trustee for the Plaintiff" and that the "Plaintiff has a vested interest in the Property". In addition, she sought the registration of certificate of pending litigation against the property.
- [5] She relies on the principle that the Provincial Court, as a statutory court, has only the jurisdiction expressly that is conferred on it by its empowering legislation, or is incidental to the exercise of that jurisdiction. In particular, it does not have jurisdiction in the following areas, as helpfully summarized in *Dalla Rosa v. Ladysmith (Town)*, 2017 BCPC 178:

27 Under section 3(1) of the Small Claims Act, the court has no express authority to grant equitable remedies under the Law and Equity Act, R.S.B.C. 1996, c. 253 but does possess the limited jurisdiction arising from necessary implication to deal with matters of procedure to ensure justice is done.

28 Also, a claim that seeks a declaratory order is beyond the jurisdiction of the Provincial Court, unless the order is incidental to a claim for relief in which the court has jurisdiction, such as specific performance [see *Mort and Power v. Le*, 2016 BCPC 287 (CanLII); [2016] B.C.J. No. 2052 at paragraphs 67 to 70 inclusive].

29 The Provincial Court cannot grant a remedy that affects any interest in land since Provincial Statutes confer this jurisdiction on the Supreme Court of British Columbia: see the Property Law Act, R.S.B.C. 1996, c. 377 at ss. 3, 13, and 35.

30 The Provincial Court does have jurisdiction to consider claims in which interests in land are at issue, insofar as those interests relate to a claim for debt or damages provided, however, no statute precludes consideration by the Provincial Court, and so long as the remedy does not affect title or an interest in land. Within those limitations, it is open to the Provincial Court to assume jurisdiction; for example, in matters involving breach of contract relating to land...

[6] The other important point made by Ms. Grenier is that the time for determining whether there was sufficient reason for proceeding in Supreme Court was when the action was initiated: *Gehlen v. Rana*, 2011 BCCA 219, at para. 21, citing *Reimann v. Aziz*, 2007 BCCA 448 at para. 13. *Reimann* made clear that there is no continuing obligation on the plaintiff to reassess the proper forum throughout the trial process.

[7] She submits therefore that since she was seeking remedies at the outset that could only be granted in this Court, she was compelled to pursue her claim here.

Defendant's Submissions

[8] Mr. Williams does not address the costs issue at length in his submissions. He argues only that Ms. Grenier has "supplied very little reason for a change of no costs applied to either party", and questions her emphasis on "title rights" (by which I took him to be referring to the interest in her former home claimed in her pleadings), in light of the foreclosure.

[9] Instead, the majority of his submissions are devoted to what I take to be a request for a reconsideration of the underlying judgment. This request is based on a variety of factors, including the inconsistency of the Greniers' testimony with the disclosures in their respective bankruptcies, and supplementary arguments on various legal and factual issues. There is no indication of why these submissions could not have been made at the trial.

[10] I found Mr. Williams to be an intelligent and resourceful litigant. In addition to his capable presentation of the detailed evidence and arguments that he had prepared, I spent time trying to draw out any additional relevant evidence and submissions that he could potentially provide. I am satisfied that he had the opportunity to put his best case forward during the trial, and that he did so. In my opinion, it would offend against the important principles of finality and proportionality in the trial process to reopen this matter to revisit essentially the same issues: *Moradkhan v. Morfidi*, 2013 BCCA 132 at para. 31. Instead I will restrict my consideration to the cost issue on which I invited submissions.

Discussion

- [11] Ms. Grenier has correctly cited the governing principles applicable to Small Claims jurisdiction.
- [12] With respect to the application of Rule 14-1(10), its definition of "sufficient reason" is not a technical one. Dealing with the predecessor under the Rules of Court, *Gradek v. DaimlerChrysler Financial Services Canada Inc. and Fletcher*, 2011 BCCA 136 explained that:
- [16] The words "sufficient reason" are not defined in the Rules of Court. In their ordinary and grammatical sense, they do not suggest a specific limitation in terms of application, although it is clear that "any reason" will not do... On the other hand, the words do not connote the exercise of a discretion... That point was made by this Court in *Reimann v. Aziz*, 2007 BCCA 448, 72 B.C.L.R. (4th) 1, at para. 13:
- [13] For a plaintiff who recovers a sum within the jurisdiction of the Small Claims Court to recover more than disbursements, the court must make a finding that there was sufficient reason for bringing the action in the Supreme Court.
- [13] The test for the existence of sufficient reason is an objective one (see *Gehlen*, at para. 32).
- [14] Many of the cases dealing with the Rule address the anticipated amount of damages if the action were successful exceeding the monetary jurisdiction of Provincial Court, or of the benefit to the plaintiff of various procedural steps that are only available in Supreme Court. The jurisdiction of the Provincial Court to grant the relief being sought is put forward less frequently as the sufficient reason.
- [15] The first difficulty I have with Ms. Grenier's position on this issue is that there are no facts pleaded in the Notice of Civil Claim that could support a claim that Mr. Williams held the funds that he had borrowed in trust, as opposed to simply having received them pursuant to a loan agreement with her. For example, there is no suggestion that he was obligated to maintain the funds separately, as opposed to combining them with his own: *Napora (Re)* (appeal by Brito), 2018 BCCA 407 at paras. 31-32. Indeed, having use of the funds for his own purposes was the whole purpose of the loan.
- [16] In addition, the mere fact of the loan in itself would not have conferred any interest in the property on her, so as to entitle her to a certificate of pending litigation in relation to it, without the granting of a mortgage or other security: for example, *De Luca v. Zomparelli*, 2018 ONSC 3789 at para. 14.
- [17] In other words, the intended use of the funds to purchase the property would not, without more, have created either of the legal effects that she claimed. Those effects are simply put forward as conclusory assertions.
- [18] It seems to me that the objective test for the existence of sufficient reason in these circumstances requires that there be some reasonable basis for concluding that the remedies being sought could only be obtained in Supreme Court at the time the action was

commenced. If it were otherwise, litigants could gain access to the costs regime in Supreme Court simply by including claims for relief that fall within its exclusive jurisdiction, without offering any material facts in support. However inelegantly it may be expressed, there needs to be at least some factual basis.

- [19] Viewed in that way, I am satisfied that the bases for proceeding in Supreme Court relied on by Ms. Grenier were not objectively reasonable on the facts that purported to justify them, and do not offer a sufficient reason within the meaning to the Rule. The only validly-supported claim was the one she succeeded on, and that could have been dealt with in Provincial Court. As a result, she is not entitled to recover her costs.
- [20] I should add that the Notice of Civil Claim was prepared by a lawyer, so no issue arises of the level of legal skill and knowledge that should be reasonably ascribed to a self-represented litigant when drafting such claims.
- [21] Mr. Williams did not offer any basis in his submissions on which he should recover his costs, and I would not have allowed them in any event. He mistakenly sought to advance his counterclaim against Mr. Grenier, even though Ms. Grenier was the only plaintiff, and I allowed it to go forward at trial only because Mr. Grenier, also mistakenly, had responded to it, and to avoid a multiplicity of proceedings. In the ordinary course it would not have been justified for Mr. Williams to make such a claim anywhere except in Provincial Court.
- [22] Accordingly, the parties will only be entitled to receive their disbursements in relation to this matter, as I described in the Reasons for Judgment.

"Schultes J."

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