
CANADA / JUDGMENT

Grosz v. Guo

2019 BCSC 1545

COURT

Supreme Court of British Columbia

DECIDED

3 June 2019

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2019 BCSC 1545 Grosz v. Guo

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Grosz v. Guo,

2019 BCSC 1545

Date: 20190603

Docket: S178289

Registry: Vancouver

Between:

Robert W.G. Grosz

Plaintiff

And

Hong Guo and Guo Law Corporation

Defendants

Before: The Honourable Mr. Justice Mayer

Oral Ruling Re Application to Declare the Plaintiff a Vexatious Litigant

In Chambers

The Plaintiff, appearing in person:

R.W.G. Grosz

Counsel for the Defendants:

T.C. Louman-Gardiner

Place and Date of Hearing:

Vancouver, B.C.

June 3, 2019

Place and Date of Ruling:

Vancouver, B.C.

June 3, 2019

Introduction

- [1] We are here today for delivery of my oral reasons for judgment in respect of the defendants' application for an order that pursuant to s. 18 of the Supreme Court Act, R.S.B.C. 1996, c. 443, the plaintiff, Robert Grosz, is declared to be a vexatious litigant. As well, the defendants seek corresponding orders preventing Mr. Grosz, unless he first obtains leave from this court, from instituting legal proceedings, setting matters down for hearing or filing documents in proceedings in any court in which he is not a party.

Background

- [2] Mr. Grosz commenced the action under which this application is brought on September 5, 2017. He sought damages for unpaid wages in the amount of approximately \$29,000 and damages for sexual harassment in the amount of \$500,000. Between September and the end of October 2017, Mr. Grosz made a series of settlement offers to the defendants, starting at \$30,000 and diminishing to just over \$8,000.
- [3] Despite ongoing discussions with counsel for the defendants and their advice that they intended to file a response, Mr. Grosz obtained a default judgment in October of 2017, which the defendants promptly applied to set aside.
- [4] In November of 2017 Mr. Grosz made an offer to settle the issues in dispute in exchange for payment to him of \$5,000. This offer was accepted by the defendants and resulted in the pronouncement of a consent dismissal order on March 18, 2018, and execution of a mutual release under which, amongst other things, Mr. Grosz agreed to set aside the default judgment and to release all claims against the defendants, except for a potential claim for malicious prosecution arising from a criminal complaint for extortion made by Ms. Guo against Mr. Grosz.
- [5] In February of 2019 Mr. Grosz applied to set aside the consent dismissal order on the basis of alleged duress involving in part an alleged conspiracy between Ms. Guo and two of her previous counsel.

- [6] Since February of 2019 Mr. Grosz has been a regular attendee in Supreme Court Chambers. He first brought two unsuccessful applications before Justices Affleck and Giaschi for orders sealing this court file and allowing his applications to proceed in camera. I was advised that Mr. Grosz had intended to appear before Justice Affleck on June 3rd in an effort to have the court reconsider its decision to refuse the in camera and sealing order applications but that application did not proceed as scheduled.
- [7] Mr. Grosz first appeared before me on March 8, 2019, to speak to his application to set aside the consent dismissal order, but part way through the proceedings this application was adjourned at Mr. Grosz's request. I ordered costs thrown away payable to the defendants in the amount of \$2,000, to be paid prior to Mr. Grosz seeking to reset his application.
- [8] On April 10, 2019, I heard and dismissed Mr. Grosz's application for reconsideration of the \$2,000 costs award previously made against him on February 19th.
- [9] Also on April 10, 2019, the defendants brought on this vexatious-litigant application. Although Mr. Grosz had been served with the defendants' application in compliance with the rules, Mr. Grosz had not filed a response and was not prepared to respond to the defendants' application. As a result, by consent order Mr. Grosz agreed as follows:
- That he would not file any further applications in this matter and certain related proceedings without leave of the court until judgment is pronounced in the defendants' vexatious-litigant application;
 - That he would file responsive materials in respect of that application by May 8, 2019; and
 - That the balance of the defendants' vexatious-litigant application would be set for one-half of one day at the earliest available date.
- [10] On April 12, 2019, Mr. Grosz brought an application without notice for leave to make an application enjoining the proposal trustee from distributing funds held by the trustees in bankruptcy proceedings involving Guo Law Corporation. Counsel for Guo Law Corporation became aware of this without-notice application and attended in chambers to oppose it.
- [11] I heard the application and adjourned Mr. Grosz's leave application on the basis that he had not provided notice to the defendants. I awarded costs of attendance on a solicitor/client basis to Guo Law Corporation payable in any event of the cause and seized myself of all applications in this proceeding until the defendants' vexatious-litigant application was heard. I also denied Mr. Grosz's request that I recuse myself.
- [12] On May 8, 2019, Mr. Grosz filed an application for leave to apply for various orders, including the provision of transcripts of various court proceedings in this matter on a without-costs basis, a rebate of fees paid for accessing and copying court documents and an extension of the May 8th deadline for filing responsive materials to the defendants' vexatious-litigant application.

- [13] Mr. Grosz's leave application came on for hearing before Justice Iyer on May 21, 2019. Justice Iyer adjourned this application and directed Mr. Grosz to bring his application before me, given that I was seized of the matter pending the outcome of the defendant's vexatious-litigant application.
- [14] On May 21, 2019, Mr. Grosz appeared before Master Tokarek along with counsel for the defendants at a Case Planning Conference and presented a case planning proposal. Master Tokarek declined to make any orders on the basis that there is no case before the courts for which case planning orders are required.
- [15] The parties again appeared before me on May 27, 2019. I dismissed Mr. Grosz's preliminary application for a further adjournment of the defendants' vexatious-litigant application. In addition, I adjourned generally Mr. Grosz's May 8th application and Mr. Grosz's further application filed on the morning of May 27th, seeking amongst other things the following relief:
- a) that Mr. Grosz be joined as a party to 11 separate actions involving one or more of the defendants;
 - b) that the defendants' counsel be removed as counsel on the basis of a conflict of interest or professional misconduct;
 - c) an order striking the defendants' vexatious-litigant application;
 - d) that the defendants' previous counsel be named, I believe, as parties in this or another action;
 - e) that I recuse myself on the basis of actual or perceivable bias.
- [16] It is my understanding that Mr. Grosz's application to set aside the consent dismissal order filed in February of 2019 has now been set for hearing on June 5, 2019, for two hours. I will just pause. I made that inquiry at the last hearing. It was my understanding that that is the case.
- [17] Mr. Louman-Gardiner, is that, in fact, the case?
- [18] MR. LOUMAN-GARDINER: That is in fact the case. I am not aware of any change, My Lord.
- [19] THE COURT: All right. Now, with respect to the applicable law in an application brought under s. 18 of the Supreme Court Act. An order declaring a person a vexatious litigant is discretionary and is not to be granted lightly. Section 18 of the Supreme Court Act reads as follows:

If, on application by any person, the court is satisfied that a person has habitually, persistently and without reasonable grounds instituted vexatious legal proceedings in the Supreme Court or in the Provincial Court against the same or different persons, the court may, after hearing that person or giving him or her an opportunity to be heard, order that a legal proceeding must not without leave of the court be instituted by that person in any court.

- [20] Section 18 provides the Court with a broad jurisdiction to control its own process to ensure that a litigant is not using the court process in an abusive manner. It enables the Court to put in place an order to restrict a litigant's presumptively unrestricted access to the courts in order to prevent the litigant from subjecting others to an endless blizzard of litigation. The ultimate goal of an order under this section is to preserve the proper administration of justice: *Semenoff Estate v. Semenoff*, 2017 BCCA 17 at para. 31.
- [21] In determining whether a litigant has habitually or persistently instituted vexatious legal proceedings, it is not necessary for the Court to find that a litigant has initiated a great number of proceedings. The term "habitual" also refers to the nature of a litigant's conduct within a particular action: *Semenoff* at para. 34.
- [22] The litigant may be difficult to deal with, but this is not a justification for a finding of vexatious conduct. The word "vexatious" describes proceedings that ought not to have been brought, and not the personality of the litigant: *T.J.H. v. C.C.H.*, 2003 BCCA 277 at para. 16.
- [23] The following non-exhaustive list of principles may be considered on an application for a vexatious-litigant order:
- a) the bringing of one or more actions to determine an issue which has already been determined by a court of competent jurisdiction constitutes a vexatious proceeding;
 - b) where it is obvious that an action cannot succeed, or if the action would lead to no possible good, or if no reasonable person can reasonably expect to obtain relief, the action is vexatious;
 - c) vexatious actions include those brought for an improper purpose, including the harassment and oppression of other parties by a multifarious proceedings brought for purposes other than the assertion of legitimate rights;
 - d) it is a general characteristic of vexatious proceedings that grounds and issues raised tend to be rolled forward into subsequent actions and repeated and supplemented, often with actions brought against the lawyers who have acted for or against the litigant in earlier proceedings.
 - e) in determining whether proceedings are vexatious, the court must look at the whole history of the matter and not just whether there was originally a good cause of action.

- f) the failure of a person instituting the proceedings to pay the costs of unsuccessful proceedings is one factor to be considered in determining whether the proceedings are vexatious;
- g) the respondent's conduct in persistently taking unsuccessful appeals from judicial decisions can be considered vexatious conduct of legal proceedings.

Lindsay v. Canada (Attorney General), 2005 BCCA 594 at para. 25.

[24] Ultimately the question is whether considering the whole of a proceeding, the litigant has, by their conduct, taken themselves "over the line": Rafique v. AWM-Alliance Real Estate Group Ltd., 2019 BCSC 247, referring to the decision in Lindsay and Hokhold v. Gerbrandt, 2017 BCSC 1249.

Analysis and Reasons

[25] There is no doubt that this matter is spinning out of control. I have outlined most but not all of the procedural history on this matter since Mr. Grosz filed his application to set aside the consent dismissal order in February of 2019.

[26] With respect to his conduct up until April 10, 2019, the defendants contend that the following categories of conduct of Mr. Grosz are vexatious:

- 1) First, repeatedly seeking to involve himself in actions to which he is not a party. Most or perhaps all of these actions involve Ms. Guo or Guo Law Corporation.
- 2) Second, unfounded complaints and threats of complaints to regulatory bodies, including the Law Society, concerning the conduct of counsel for the defendants and a complaint to the Superintendent of Bankruptcy regarding the trustee dealing with Guo Law Corporation's bankruptcy.
- 3) Third, making personal threats and accusations suggesting that the defendants' previous counsel are a party to a criminal conspiracy against him.
- 4) Fourth, breaching legal obligations by disclosing records concerning confidential proceedings involving Ms. Guo's dealings with her previous client.
- 5) Fifth, asking this court to reconsider three of its previous rulings, one of which includes a consent dismissal order, rather than appealing these rulings.
- 6) Sixth, making veiled or perhaps not so veiled threats to Ms. Guo regarding potential criminal incarceration for various alleged wrongdoings on her part.
- 7) Seventh, Mr. Grosz's participation in a number of other proceedings.

- [27] At the hearing before me on May 27th, the defendants provided an updated summary of allegedly vexatious conduct since April 10th, including the various filings which I have already summarized and as well an affidavit including extensive correspondence to a number of parties, including the bankruptcy trustee dealing with the Guo Law Corporation, the Law Society, numerous counsel, the registries and Chief Justices of this Court and the BC Court of Appeal, representatives of Access Pro Bono, and there may well be others.
- [28] I have little hesitation in describing Mr. Grosz's conduct as Quixotic. It appears to me that Mr. Grosz's flurry of applications after February of 2019 and his correspondence to the Law Society, benchers, various counsel, this Court and the Court of Appeal primarily arise from his belief that there is and perhaps is still a conspiracy involving a number of lawyers, a bankruptcy trustee, the Law Society and potentially the judiciary to prevent him recovering on a judgment against the defendants should he be successful in overturning the consent dismissal order, and as well Mr. Grosz's belief that the defendants were somehow involved in a money laundering scheme. He either has or has threatened to report various alleged financial wrongdoings by the defendants to the police and to the media.
- [29] Mr. Grosz has not acted in a polite or respectful manner to this Court during his appearances and in the correspondence I have reviewed. As well, I am informed that his treatment of registry and scheduling staff has been at times rude and disruptive. His repeated and unsubstantiated complaints regarding the conduct of lawyers and the bankruptcy trustee acting for the defendants are arguably defamatory.
- [30] Although I consider that Mr. Grosz has at times acted in a rude and inappropriate manner in the course of this litigation, after considering the principles set out in Lindsay and the decisions which followed, I do not consider that his conduct warrants a finding that he is a vexatious litigant in the context of this matter. As well, given the status of this litigation I do not consider it appropriate to make such a finding at this time.
- [31] Many of the examples raised by the defendants of Mr. Grosz's alleged improper conduct concern matters which are not before this court or if they are before this court, do not concern this litigation. In my view the remedy under s. 18 of the Supreme Court Act should only be applied to deal with vexatious conduct in the context of matters before this Court. The Court is not here to police bad behaviour in respect of actions by a party outside of the court process.
- [32] Other remedies are available to deal with the allegedly improper conduct on the part of Mr. Grosz, including the making of a number of improper allegations and a number of unnecessary court filings. Those remedies include seeking costs and in particular special costs at the end of the day. I note that costs against Mr. Grosz have already been assessed in this matter. First, costs thrown away when he abandoned his original application to set aside the consent dismissal order in March; and second, costs of counsel's attendance on a solicitor-and-client own basis when Mr. Grosz brought an unsuccessful without-notice application for leave for an order preventing payment out from an account held by the

trustees of the Guo Law Corporation.

- [33] It is my understanding, which has been confirmed, that Mr. Grosz will be proceeding with his application to set aside the consent dismissal order on June 5, 2019, two days from now. It is also my understanding that the defendants wish that this application proceed so that Mr. Grosz's claim can be finally dealt with, subject of course to his right of appeal. I agree that this step is required.
- [34] Accordingly, I dismiss the defendants' application for a finding that Mr. Grosz is a vexatious litigant. It goes without saying that if, for example, Mr. Grosz fails to bring on his application to set aside the consent dismissal order as currently planned or afterwards in a timely manner and Mr. Grosz continues with his past conduct, that the defendants are in no way precluded from bringing a further application pursuant to s. 18 of the Supreme Court Act.
- [35] If Mr. Grosz intends to proceed first with his applications filed May 27, 2019, he is at liberty to do so. I am not seized of those or any further applications in this matter.
- [36] Mr. Grosz, speaking to you now. I trust that you will consider your future behaviour very carefully, and in particular your tendency to make unsubstantiated allegations against third parties. As well your behaviour with members of this Court's administrative staff has been, in my view, completely unacceptable. Although I am not going to apply any sanctions in this respect, consider yourself to have been put on notice.
- [37] With respect to costs, costs are in the cause.

"Mayer J."

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