

CANADA / JUDGMENT

Grosz v. Guo

2020 BCSC 998

COURT

Supreme Court of British Columbia

DECIDED

6 July 2020

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2020 BCSC 998 Grosz v. Guo

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Grosz v. Guo,

2020 BCSC 998

Date: 20200706

Docket: S178289

Registry: Vancouver

Between:

Robert W.G. Grosz

Plaintiff

And

Hong Guo and Guo Law Corporation

Defendants

Before: The Honourable Madam Justice Forth

Reasons for Judgment

Re: Adjournment Application

Plaintiff appearing in person:

R.W.G. Grosz

Counsel for the Defendants:

S.J. Nelligan

Counsel for The Law Society of British Columbia:

G. Hoekstra

Place and Dates of Hearing:

Vancouver, B.C.

March 4-5, 2020

Place and Date of Judgment:

Vancouver, B.C.

July 6, 2020

Introduction

- [1] On February 26, 2019, the plaintiff, Robert W.G. Grosz, filed an application to set aside a consent dismissal order filed in this action on March 22, 2018 (the "February 26 Application").
- [2] On March 4, 2020, the date of the scheduled hearing for the February 26 Application, Mr. Grosz handed up a notice of application, filed that same day, seeking to withdraw or dismiss the February 26 Application without costs and without prejudice to reapply (the "Withdrawal Application"). The defendants, Hong Guo and Guo Law Corporation (collectively, the "defendants"), opposed the Withdrawal Application and sought to have the February 26 Application proceed to be heard on its merits.
- [3] I refused to grant the Withdrawal Application, and the February 26 Application proceeded on its merits. I advised that reasons would follow to explain why the Withdrawal Application was refused. These are those reasons.

Background Facts

- [4] Mr. Grosz began working as a paralegal for Ms. Hong Guo at the Guo Law Corporation in October 2016. He was terminated in or about August 2017.
- [5] Mr. Grosz claimed that he was not paid all of his wages and that Hong Guo created a hostile work environment and sexually harassed him.
- [6] On September 5, 2017, Mr. Grosz filed a notice of civil claim against the defendants. In the claim, he sought unpaid wages and disbursements, damages for sexual harassment and wrongful dismissal, punitive damages, an order requiring the establishment of a sexual harassment policy statement, and special costs.

- [7] On the same day, the police arrested Mr. Grosz. According to the promise to appear, the offences were alleged to have occurred on September 1, 2017 with the offence descriptions being criminal harassment, sexual assault, and uttering threats against Ms. Guo. He was released on an undertaking to appear in court on September 13, 2017 and to abide by certain conditions, including that he abstain from communicating, directly or indirectly, with Ms. Guo.
- [8] On September 6, 2017, Mr. Grosz attended in master's chambers on a without notice application seeking alternative service on the defendants. Master Vos ordered that the defendants could be served by providing a copy of the notice of civil claim to Mr. Craig Jones, Q.C., and by emailing a copy to Ms. Guo.
- [9] On September 13, 2017, an information was sworn against Mr. Grosz on two counts. The first count alleged that from July 1 to August 30, 2017, he harassed Ms. Guo, contrary to s. 264 of the Criminal Code, R.S.C. 1985, c. C-46 [Code]. The second count alleged that, during the same period, he knowingly uttered or conveyed a threat to Ms. Guo to cause her harm, contrary to s. 264.1(1) of the Code (collectively, the "Criminal Charges"). On September 15, 2017, Mr. Grosz appeared in Provincial Court and was released on conditions.
- [10] On September 28, 2017, Mr. Grosz filed a without notice application for default judgment on the basis that the defendants had not filed any response to civil claim.
- [11] On October 2, 2017, Master Dick heard the without notice application and granted the following order (the "Default Judgment"):
1. the defendant Hong Guo shall pay \$8,249.43 to the plaintiff Robert W.G. Grosz;
 2. the defendant Guo Law Corporation shall pay \$4,525.39 to the plaintiff Robert W.G. Grosz.
- [12] Two other orders that Mr. Grosz sought in his draft order were not granted and were struck out by the master.
- [13] The Default Judgment was served on October 2, 2017.
- [14] On October 18, 2017, Bryant Mackey, lawyer for the defendants, filed a response to civil claim and an application to set aside the Default Judgement.
- [15] I will not canvass in these reasons what transpired between October 18, 2017 and March 22, 2018 since what occurred during this time is primarily relevant to the merits of the February 26 Application. It will be canvassed in those reasons.
- [16] On or about January 17, 2018, Crown counsel entered a stay of proceeding on the Criminal Charges. Mr. Grosz was advised that a stay of proceedings meant that the Crown had 12 months to reconsider and re-institute proceedings if it so chose.
- [17] On January 18, 2018, a mutual release was signed by the parties to the civil action. It provided:

Grosz, Guo, and GLC hereby agree to set aside the judgment obtained in the Action, dismiss the Action without costs to any party, with an order of the Court that such dismissal will be as though judgment was pronounced on the merits, and that Grosz will receive \$5,000 of the funds paid into Court to the credit of the Action with the remainder to be released to the holder or holders of the accounts from which the payments into Court were made.

- [18] On March 22, 2018, Mr. Grosz and Mr. Mackey appeared before Master Keighley and a consent dismissal order was granted (the "CDO").
- [19] Mr. Grosz received the \$5,000 in settlement funds.
- [20] On February 20, 2019, Mr. Grosz filed a requisition seeking an order to waive fees. On that day, Master Harper granted an order waiving fees for filing one notice of application and two affidavits, with liberty to apply.
- [21] On February 21, 2019, Mr. Grosz filed a without notice application to be heard in camera (closed to the public) for an order that the court set aside the CDO based on that it was obtained by duress to him, and for an order sealing the file. This application was set for hearing on February 25, 2019. Mr. Grosz appeared before Justice Giaschi, who dismissed the application in its entirety and ordered that Mr. Grosz had leave to re-apply, but that any re-application for an order setting aside the CDO had to be served on the defendants.
- [22] On February 25, 2019, Master Muir granted an order waiving fees for six months. The next day, Mr. Grosz filed the February 26 Application, to be heard in camera, seeking to set aside the CDO on the basis that it was obtained by duress to him. The February 26 Application was returnable on March 8, 2019. It is this application that was ultimately before me on March 4 and 5, 2020.
- [23] On March 6, 2019, counsel for the defendants, Tim Louman-Gardiner, filed a response to the February 26 Application.
- [24] On March 8, 2019, the parties appeared before Justice Mayer who adjourned the February 26 Application generally at Mr. Grosz's request. He also made the following further orders (the "March Order"):
2. The Plaintiff shall pay to the Defendants costs thrown away in respect of the attendance on March 8, 2019 in the amount of \$2,000 forthwith in any event of the Cause (the "Costs Payment");
 3. Mr. Justice Mayer will be seized of any application by the Plaintiff to re-consider or vary the Costs Payment. Such application may be set for hearing for one hour;
 4. The Plaintiff shall not be at liberty to re-set the February 26 Application until the Costs Payment has been made;
 5. At the hearing of the February 26 Application the Plaintiff may only rely on materials that he has served on counsel for the Defendants.

- [25] On March 14, 2019, Mr. Grosz sent to the Vancouver Registry a request to appear before Justice Mayer to have a hearing to reconsider the \$2,000 costs order ordered by the March Order.
- [26] On March 28, 2019, the defendants served a notice of application seeking to have Mr. Grosz declared a vexatious litigant pursuant to s. 18 of the Supreme Court Act, R.S.B.C. 1996, c. 443 (the "Vexatious Litigant Application"). The Vexatious Litigant Application was set for April 10, 2019.
- [27] On April 3, 2019, Mr. Grosz filed an application to be heard in camera seeking to have the \$2,000 costs order varied or set aside.
- [28] On April 10, 2019, Mayer J. heard Mr. Grosz's reconsideration application and dismissed it. The comment made at para. 13 of his reasons is of significance:
- [13] The only way to encourage Mr. Grosz, to ensure that he proceeds in an expeditious way, where appropriate materials are filed, defendant responds, and the matter proceeds as scheduled, is to deliver a message to Mr. Grosz, as a plaintiff, that there are repercussions if he does not do so. So, as a result, I decline Mr. Grosz's application to vary my previous order with respect to the payment of costs.
- [29] The Vexatious Litigant Application hearing commenced on April 10, 2019 and continued on May 27, 2019.
- [30] On June 3, 2019, Mayer J. released his oral reasons (indexed as 2019 BCSC 1545), dismissing the Vexatious Litigant Application. Of significance to the applications before me is the comment made by Mayer J. at para. 34:
- [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.
- [31] On November 5, 2019, the parties appeared before me for a judicial management conference in a related bankruptcy action. At that time, the issue of the resetting of the February 26 Application was discussed. Mr. Grosz advised that he had a DVD recording of Hong Guo made sometime after he had filed the February 26 Application. He wanted to refer to it at the hearing of the February 26 Application to set aside the CDO. I advised him that he could attach the DVD to an affidavit and if the registry did not accept it, he could bring it to the hearing and hand it to me.
- [32] I was advised that Mr. Grosz had paid the \$2,000 costs order and as such, there was no longer any prohibition to setting down the hearing of the February 26 Application. Mr. Grosz wanted the opportunity to amend his materials before the Application was heard.

[33] On November 5, 2019, I made the following orders (the "November Order"):

1. The Plaintiff has leave to amend his Notice of Application filed February 26, 2019, to be filed and served no later than January 2, 2020 at 4:00 p.m.
2. The Defendants may file any further or additional response materials, to be filed and served no later than January 16, 2020 at 4:00 p.m.
3. The hearing of the Plaintiff's application to set aside the Consent Dismissal Order pronounced in this proceeding shall be heard on March 5 and 6, 2020 before Madam Justice Forth.
4. Approval as to the form of this order by Robert W.G. Grosz is dispensed with.

[34] The March 2020 dates were chosen over the objections of then-counsel for the defendants, Mr. Louman-Gardiner, who objected to a lengthy delay in having this matter heard. His position was that the matter should be set down for hearing at the first available dates, which were in February.

[35] Mr. Grosz objected to having the February 26 Application heard in February 2020 since he claimed there was a benchers hearing scheduled in February 2020 respecting Ms. Guo and he had to be in attendance. To accommodate Mr. Grosz, I set the matter for hearing on March 5 and 6, 2020.

[36] The plaintiff did not file any further materials in accordance with my November Order.

[37] The counsel who was acting on behalf of the defendants in this action, Mr. Louman-Gardiner, is no longer acting for the defendants. Mr. Grosz sued Mr. Louman-Gardiner along with other past lawyers who acted for the defendants in another action, being *Grosz v. Jones*, Vancouver Registry No. S1912718, on November 12, 2019.

[38] Due to a criminal matter I had to hear on March 6, 2020, the dates for the hearing of the February 26 Application were changed to March 4 and 5, 2020.

Positions of the Parties

The Plaintiff

[39] The plaintiff sought to withdraw the February 26 Application on the bases that:

1. the British Columbia Supreme Court lacked jurisdiction because he had put the matter before the Federal Court;
2. as the presiding judge, I lacked impartiality and independence; and
3. there was no use in pursuing this matter because there was no prospect of ever being able to collect any judgment.

- [40] When I dismissed the Withdrawal Application, Mr. Grosz then sought to adjourn on the basis that he was too tired, overwhelmed, and ill to continue.

The Defendants

- [41] The position of the defendants is that this action was settled and Mr. Grosz signed a mutual release and consented to a CDO on March 22, 2018. In February 2019, the plaintiff applied to set aside the CDO. The defendants argue that they are entitled to have the merits of the February 26 Application heard so that there is a final resolution to this matter.
- [42] The defendants submit there is no basis to permit any further delay in having the February 26 Application heard. This matter needs to be heard to determine if Mr. Grosz is a creditor in the bankruptcy proceeding. Ms. Nelligan, counsel for the the defendants, advised that the proposal trustee cannot hold off any longer in getting the proposal wrapped up.

Legal Principles

- [43] An overarching principle of the Supreme Court Civil Rules is that there be "a just speedy and inexpensive" determination on the merits: Rule 1-3, *Cotter v. Point Grey Golf and Country Club*, 2015 BCSC 447 at paras. 21-22.

Analysis

- [44] Mr. Grosz is seeking a further delay of a determination on the merits of his application to set aside the CDO. The application was originally filed on February 26, 2019, now over a year ago. Mr. Grosz is not prepared to abandon the application; he simply wants to withdraw it at this time, with liberty to refile it in the future. He alternatively suggested he could start a new action seeking to set aside the CDO.
- [45] Mr. Grosz's view is that he has a right to withdraw the application. He does not have that unilateral right. The hearing of this matter was set by my court order.
- [46] There is no merit in Mr. Grosz's submission that the British Columbia Supreme Court has lost all jurisdiction over this matter since he has sought to file a Statement of Claim in the Federal Court. The lack of merit of this argument has been addressed in my reasons in this action, indexed as 2020 BCSC 997 at paras. 9-18 (the "Injunction Reasons"). As I explained in the Injunction Reasons, the proposed Federal Court Action does not deprive this Court of jurisdiction because there is no relief claimed against the Crown in this action that would operate to give the Federal Court exclusive or concurrent jurisdiction, and because the underlying basis of the claims are distinct. This action deals with Mr. Grosz and Ms. Guo's employment relationship, whereas the proposed Federal Court Action deals with claims relating to various properties that Ms. Guo dealt with in Richmond in an allegedly fraudulent manner, and the failure of various governmental agencies to properly investigate Ms. Guo's conduct in relation to those properties and in relation to her alleged trust fund theft.

- [47] Mr. Grosz alleges that I am biased, not impartial, and not independent. This is the same argument Mr. Grosz raises at each of the applications I have heard since I decided *The Matryx Corporation v. Royal Trust Corporation of Canada* (indexed as 2019 BCSC 1993) against him. Reference should be made to the Injunction Reasons at paras. 19-26 respecting this issue. I am not prepared to allow the February 26 Application to be withdrawn on this basis. Mr. Grosz had the opportunity to bring his recusal application on February 25, 2020 and he chose not to proceed with it on that date.
- [48] I see no basis on which to accede to the Withdrawal Application in these circumstances. The defendants are entitled to have the issue determined on its merits at this time without any further delays.
- [49] The third basis for the withdrawal was that Mr. Grosz was not sure he could collect on any judgment at this time so he wanted to delay making this application into the future when the defendant, Guo Law Corporation, would be able to satisfy the judgment. This does not provide a basis for which to withdraw this application. Mr. Grosz chose to follow the route of applying to set aside the CDO and the defendants are entitled to know whether this action against them is ended or whether it will continue.
- [50] When I announced my decision that we were proceeding with the February 26 Application, Mr. Grosz then sought an adjournment on the basis that he was very tired, had been up late and into the early morning, and had been ill. This is a frequent basis he provides for adjournment requests: see my reasons indexed at 2019 BCSC 2195 at paras. 34-37 and my Injunction Reasons at paras. 27-34.
- [51] In order to accommodate Mr. Grosz, I gave him the option to allow the defendants to go first, and when the defence submissions were concluded, we would adjourn and he could make his submissions the following day at 10 a.m. He accepted that offer. The defence submissions were completed by 12:30 p.m. and I adjourned until 10 a.m. the next day.
- [52] In my view, it is not in the interests of justice to permit Mr. Grosz to unilaterally withdraw this application when he intends either to bring it again in the future or potentially seek to start a new action against these defendants.
- [53] For these reasons, the Withdrawal Application of Mr. Grosz filed and spoken to on March 4, 2020 was dismissed and the February 26, 2019 Application proceeded on March 4 and 5, 2020.
- [54] Any order entered arising from these reasons does not require the signature of Mr. Grosz.

"Forth J."

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Prepared on 24 October 2026 · Esheria