

CANADA / JUDGMENT

Haneine v. Rivas

2012 BCSC 569

COURT

Supreme Court of British Columbia

DECIDED

5 April 2012

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2012 BCSC 569 Haneine v. Rivas IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Haneine v. Rivas, 2012 BCSC 569 Date: 20120405 Docket: S113949 Registry: Vancouver Between: Alicia Haneine Plaintiff And: Silvia Rivas, Canadian Real Estate Investment Group, Canreig, Canreig BC, Canreig Building Development Ltd., 1407740 Ontario Inc., 0822335 B.C. Ltd., and Dave Ravindra Defendants Before: The Honourable Mr. Justice Fitch Oral Reasons for Judgment In Chambers Counsel for the Plaintiff: J.D. Shields Counsel for the Defendants, Canreig Building Development, 1407740 Ontario Ltd., and Dave Ravindra: J.M.S. Woolley The Defendants, S. Rivas, Canadian Real Estate Investment Group and 082235 B.C. Ltd. No appearance Place and Date of Hearing: Vancouver, B.C. April 5, 2012 Place and Date of Judgment: Vancouver, B.C. April 5, 2012

- [1] THE COURT: This is an application by the defendants Dave Ravindra, Canreig Building Development Limited, and 1407740 Ontario Inc. to adjourn this trial scheduled for four days commencing April 10, 2012.
- [2] The plaintiff alleges that she gave \$150,000 to the defendants for investment purposes, which was diverted to other unauthorized ends.
- [3] This is the second such application made by the defendants. The first was heard by Mr. Justice Blair on February 16, 2012. Counsel for the defendants contended at that time that the matter was simply not ready to proceed to trial as required steps had not yet been completed. The defendants' counsel also advised Justice Blair that his father had a serious medical condition and that he was anxious to be with his family during this difficult period, and unable to prepare for or proceed on the date fixed for trial.
- [4] The defendants' adjournment application was dismissed for two reasons. First, the court's concern that delay might prejudice the plaintiff, and, second, the court's conclusion that the defendants were responsible for the delay that had occurred in this matter.

- [5] By way of brief history, the plaintiff filed her notice of civil claim on June 12, 2011. The notice of civil claim was amended to add a new party on September 7, 2011. The applicants filed their response to civil claim on September 20, 2011. The applicants filed a third party notice on October 20, 2011. The third parties filed their response to third party notice on November 15, 2011. On December 5, 2011, the plaintiff filed a notice of trial, setting the trial for four days commencing next Tuesday, April 10, 2012.
- [6] In dismissing the first adjournment application, Justice Blair said this: ... I acknowledge that counsel for the defendants has what appears to be legitimate concerns about this matter being ready for trial, and to address that concern should it continue, I think it appropriate that the Ontario defendants should have liberty to advance another application to adjourn at or about the time scheduled for the trial management conference should the steps necessary for this matter to be ready for trial be interrupted or falter for some reason. I am not saying that the Ontario defendants must make an application to adjourn, but I leave it open for them to do so. Further, if defence counsel is unable to continue to act in this case for the reasons noted above, I would think that there remains time for the Ontario defendants to retain new counsel who would be in a position to carry this case forward. It is abundantly clear to me that Mr. Turner, despite having come onto this case late, just last month, about the 20th, 23rd, of January, has brought himself up to speed. He has done so in a remarkably short period and I would conclude that so too could other counsel.
- [7] There have been two material changes in circumstance that have taken place since the disposition of the matter by Justice Blair. First, counsel for the applicants in fact withdrew from the case on March 6, 2012, following the appearance before Mr. Justice Blair, to attend to his pressing family circumstances.
- [8] The matter came before Mr. Justice Sigurdson on a trial management conference on March 8, 2012. Mr. Ravindra was unrepresented at that time. Justice Sigurdson was unable to deal with the renewed adjournment application as affidavit evidence was required. I note that Rule 12-2(11) precludes a judge presiding at a TMC from hearing an application for which affidavit evidence is required. Justice Sigurdson directed that the adjournment application be heard on March 27, 2012. It did not take place that day. Mr. Ravindra deposes that he thought the date was March 30, 2012, and that he was unaware of his obligation to file material in support of the adjournment application.
- [9] The second material change in circumstance since the matter was dealt with by Justice Blair is this. Mr. Ravindra's father, who lives in Ontario, was also gravely ill in the month of March 2012. Mr. Ravindra deposes that the focus of his attention was seeing to his father's health and his family's affairs in the month of March, 2012. Mr. Ravindra's father in fact died on March 26, 2012. His father's funeral rites have been scheduled for April 8 and April 11, 2012, in Mississauga, Ontario, and thus conflict with the scheduled trial dates.
- [10] In light of what has occurred since the matter was before Justice Blair, it is apparent that this case cannot proceed to trial on April 10, 2012, and must be adjourned.

- [11] Counsel for the plaintiff submits that if an adjournment is granted, it ought to be on terms requiring the defendants to post \$150,000 as security in his trust account; in other words, the full amount of the claim. He takes this position because of a concern that delay may impair his client's ability, if she is successful in the action, to realize on any judgment granted in her favour. I was advised that trial dates for this matter cannot now be made available until January 13, 2013.
- [12] While a term such as the one the plaintiff seeks may well be appropriate in a given case, I would decline to impose it in this case. This is not a case where the circumstances giving rise to the adjournment were manufactured. Moreover, it is my view that some evidence is required in circumstances such as those as exist in this case to justify the order the plaintiff seeks. In this case, the plaintiff's counsel advised me in oral submissions that one of the defendants has already sought bankruptcy protection. He advises that the plaintiff is fearful that her claim, if not proceeded with expeditiously, will be hollow even if she is successful. But I was not, on the hearing of this application, taken to evidence which would justify imposing the condition the plaintiff seeks. In the absence of that evidence, I decline to exercise my discretion to impose as a term of the adjournment order the condition the plaintiff seeks.
- [13] The defendants shall, however, pay to the plaintiff forthwith her costs, on a party-and-party basis, resulting from the trial management conference on March 8, 2012, the aborted appearance on March 27, 2012, if there was one, as well as her costs arising out of this adjournment application.
- [14] The adjournment is granted.
- [15] Counsel, I can indicate to you that I contacted the Registry over the lunch break to see if earlier trial dates might be made available. I am advised that a block of time sufficient to accommodate this matter could be made available November 5th. It is not as well as I had hoped to do but it is as good as I can do. In the circumstances, if you are available on the week of November 5th, that is a Monday, Mr. Shields, I would be prepared to set the matter down for trial during the week of November 5th and mark that trial date peremptory on the defendants.
- [16] MR. SHIELDS: If you would do so. If I cannot be available, I will have someone else appear.
- [17] MR. WOOLLEY: That is fine, My Lord. We would need to check with Mr. Rogers as well for the third parties, but that is fine.
- [18] THE COURT: Provided that the third parties can be made available, then, and I would ask that counsel confirm that as quickly as possible, the date of November 5th will be held for this trial. Please get back to the Registry, to Ms. Smolen, as quickly as possible. That date, if it is agreeable to counsel, if counsel can be available, is peremptory on the defendants.

[19] MR. SHIELDS: Thank you. My Lord, can I just ask, the party-and-party costs payable to my client, are they forthwith --

[20] THE COURT: Yes.

[21] MR. SHIELDS: -- and in any event?

[22] THE COURT: I said forthwith.

[23] MR. SHIELDS: I just want -- in any event?

[24] THE COURT: In any event of the cause, yes.

[25] MR. SHIELDS: Yes. The costs for the preparation of the trial are not included or included?

[26] THE COURT: Are not included. "G. Fitch, J."

G. Fitch, J.

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