

CANADA / JUDGMENT

Hans v. Sood

2022 BCSC 450

COURT

Supreme Court of British Columbia

DECIDED

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2022 BCSC 450 Hans v. Sood

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Hans v. Sood,

2022 BCSC 450

Date: 20220318

Docket: S209415

Registry: New Westminster

Between:

Baldev Singh Hans

Plaintiff

And

Aditya Sood and 1139314 B.C. Ltd.

Defendants

Before: The Honourable Justice Douglas

Reasons for Judgment

Counsel for Plaintiff:

C. Kooner

(By Video)

Counsel for Defendants:

W. E. Knutson, Q.C.

J. Foster

(By Video)

Counsel for Non-Party, Karamvir Pawar

Place and Date of Hearing:

F. Lamer

(By Video)

New Westminster, B.C.

January 25, 2022

Place and Date of Judgment:

New Westminster, B.C.

March 18, 2022

TABLE OF CONTENTS

I. OVERVIEW.. 3

II. PROCEDURAL HISTORY. 5

III. ORDER OF MASTER CALDWELL. 6

IV. ISSUES. 7

V. LEGAL FRAMEWORK. 7

A. Filing a CPL. 7

B. Cancelling a CPL. 8

VI. ANALYSIS AND CONCLUSIONS. 9

A. What is the defendants' remedy if they disagree with the Order?. 9

B. Is this application barred by the doctrine of res judicata?. 10

C. Did the Master have jurisdiction to cancel the CPL?. 11

VII. DISPOSITION. 12

I. OVERVIEW

- [1] The defendants, Aditya Sood and 1139314 B.C. Ltd. ("113 Ltd."), seek a declaration that a certificate of pending litigation (the "CPL") previously registered on title to property located at 11037 Ravine Road, Surrey, BC, more particularly described in the notice of civil claim (the "Property"), was non-compliant with the requirements of s. 215 of the Land Title Act, R.S.B.C. 1996, c. 250 [LTA] and therefore invalid when filed. They assert that neither the notice of civil claim (the "NOCC") nor the amended notice of civil claim (the "ANOC") discloses an interest in land, as required by s. 215 of the LTA. They say this Court retains an inherent jurisdiction to cancel the CPL if the NOCC is incapable of supporting an interest in land.
- [2] By extension, the defendants apply for an order releasing the \$800,000 of security currently being held in trust (the "Funds"), posted pursuant to the December 18, 2018 order of Master Caldwell (the "Order"), removing the CPL from title to the Property.
- [3] By a series of consent orders, the Funds, together with any accrued interest, were transferred several times after the defendants retained new counsel, as follows:
- i. From Highland Law Corporation, pursuant to the Order, to Bernard LLP, in trust, pending further order of the Court, by order entered March 28, 2019;
 - ii. From Bernard LLP in trust, to Wiebe Wittman El-Khatib LLP, in trust by order entered June 3, 2019; and
 - iii. From Wiebe Wittman El-Khatib LLP, in trust to Triton Law, by order entered January 21, 2021.
- [4] Although William Knutson of Clyde & Co Canada LLP represented the defendants on the application before me, I understand the Funds currently remain in trust with Triton Law.
- [5] The defendants argue that the plaintiff, Baldev Singh Hans, inappropriately used the CPL as leverage to obtain security for what has always been a monetary claim for damages, namely: a claim to share in the profit from the sale of the Property. They deny they seek to impugn the Order. Rather, having retained new counsel and examined the NOCC, they now conclude that Mr. Hans has no pleaded claim for an interest in the Property. Accordingly, they submit that the CPL was invalid when filed and the Funds ought to be released to them.
- [6] Mr. Hans is opposed to the relief sought. He argues that the Defendants did not pursue the one avenue of recourse available to them, namely: an appeal of the Order. He describes this application as an impermissible collateral attack on the Order and submits that the validity of the CPL is res judicata and barred by the doctrine of issue estoppel, having been decided by the Order.

- [7] Counsel for Karamvir Pawar, a defendant and plaintiff by counterclaim in separate proceedings (S-190810) commenced in the Vancouver Registry of this Court (the "Related Proceeding"), appeared on this application. On January 24, 2019, the defendants commenced the Related Proceeding, alleging that Mr. Pawar had conspired with Mr. Hans to commence the within action as an abuse of process. Mr. Pawar advances a counterclaim in the Related Proceeding and claims an interest in the Funds.
- [8] By consent order entered April 26, 2019, this action and the Related Proceeding were scheduled to be tried at the same time, with the evidence in each action comprising evidence in both actions, as if they were consolidated. The trial of both actions is currently set to proceed for 20 days commencing April 25, 2022.
- [9] While the defendants objected to counsel for Mr. Pawar making submissions on this application, I accept that his client claims an interest in the Funds in the Related Proceeding which is scheduled by consent to proceed to trial at the same time as the within action. Accordingly, I concluded that he had standing to make submissions on this application.
- [10] Mr. Pawar adopts Mr. Hans' position on this application. He submits that the Order secures the rights of anyone who may have an interest in the Funds, which ought not to be released until a final determination at trial. For the reasons that follow, I concur.

II. PROCEDURAL HISTORY

- [11] Mr. Hans commenced these proceedings by the NOCC filed December 13, 2018. The same day, he obtained the CPL. On December 14, 2018, he filed the ANOCC, pleading a beneficial and equitable interest in the Property.
- [12] In the NOCC, Mr. Hans alleges that he and Mr. Sood entered into a joint venture agreement to purchase the Property for the sole purpose of developing and selling it. He alleges that he located the Property and that Mr. Sood caused 113 Ltd. to be incorporated for the sole purpose of purchasing it. Mr. Hans pleads further that, after 113 Ltd. entered into a contract of purchase and sale for the Property, Mr. Sood breached their joint venture agreement by assigning the contract of purchase and sale to a third party and retaining the profit. The defendants deny these allegations in their response to civil claim filed December 17, 2018.
- [13] On December 17, 2018, the CPL was registered on title to the Property. The same day, the defendants filed a notice of application, on short leave, seeking an order removing the CPL pursuant to s. 256 of the LTA. On December 18, 2018, Master Caldwell ordered that the CPL be removed pursuant to ss. 256 and 257 of the LTA and that the Defendants post the Funds as a condition of the Order. The defendants now submit that Master Caldwell was led astray by the submissions of counsel and not provided with the correct law.

III. ORDER OF MASTER CALDWELL

- [14] In their notice of application filed December 17, 2018, the defendants sought an order pursuant to s. 256 of the LTA cancelling the CPL registered on title to the Property. They expressly stated in this filed notice of application that the matter fell within the jurisdiction of a master. They now advance the opposite position.
- [15] The defendants argued before Master Caldwell that the CPL ought to be cancelled due to hardship and inconvenience. At the time, there was a pending sale of the Property with a closing date of December 20, 2018 (the "Sale"). The defendants sought summary judgment pursuant to R. 9-6, dismissing Mr. Hans' claim on the basis he had no arguable case or triable issue on his pleadings and no interest in the Property.
- [16] In oral reasons for judgment dated December 18, 2018, Master Caldwell stated as follows:
- [11] The hurdle is not high for the plaintiff to establish a triable issue to get him into s. 215. A number of cases that have been referred to me both today and previously indicate that. There are references that have been placed in front of me from the plaintiff's book of authorities. At Tab 2 he quotes from the case of *EVO Properties v. 637934 B.C. Ltd.*, 2004 BCSC 1203 at paragraph 48:

The offer to purchase appears to contemplate a land transaction. The possession clause is an example of this. It is at least arguable that the share purchase provision was an option available to the purchaser and that the basic structure of the agreement was a land purchase. The plaintiff has claimed an interest in land and the certificate should not be struck out on this basis.

- [12] Over to Tab 3, the decision of *De Cotiis v. De Cotiis*, 2004 BCSC 1658 at paragraph 38, quoting from Mr. Justice Lander in the decision of *309355 B.C. Ltd. v. Cambie Pacific Enterprises Ltd.*, [1998] B.C.J. No. 1529 (S.C.) where he says:

While I might consider the case of the plaintiff "thin", I cannot on the affidavit evidence decide the issue. During the course of the trial when all the evidence is adduced viva voce an entirely different view of the matter might be created for the trial judge than the one I have at the present moment. For these reasons, I am refusing the application under Rule 18 and also am declining to cancel the *lis pendens*.

- [13] I am afraid that I am in a similar position here. On balance, I think the argument with respect to an interest in land may be thin, but I cannot say that it is a certainty and that there is no triable issue.
- [14] On that basis I think we are past s. 215 and we get to s. 256. I have discretion to cancel. The consequence of not cancelling will be to stop a conveyance of the property which is set to occur in two days' time.

[17] After determining the validity of the CPL under s. 215 of the LTA, Master Caldwell cancelled the CPL pursuant to s. 256 of the LTA and ordered that the Funds be posted as security. He did so to allow completion of the Sale then set to close in two days. In other words, the Order was made to avoid hardship and inconvenience to the defendants and to their benefit. The defendants now seek to revisit the submissions made on their behalf before Master Caldwell, to void the CPL, and to release the Funds. They did not appeal the Order.

IV. ISSUES

[18] The following issues arise on this application:

- a) What is the defendants' recourse if they disagree with the Order?
- b) Is this application barred by the doctrine of res judicata?
- c) Did the Master have jurisdiction to determine the validity of the CPL?

V. LEGAL FRAMEWORK

A. Filing a CPL

[19] Section 215 of the LTA sets out who may register a CPL. It provides, in part, as follows:

215 (1) A person who has commenced or is a party to a proceeding, and who is

- (a) claiming an estate or interest in land, or
- (b) given by another enactment a right of action in respect of land,

may register a certificate of pending litigation against the land in the same manner as a charge is registered, and the registrar of the court in which the proceeding is commenced must attach to the certificate a copy of the pleading or petition by which the proceeding was commenced, or, in the case of a certificate of pending litigation under Part 5 of the Court Order Enforcement Act, a copy of the notice of application or other document by which the claim is made.

- (2) The land affected by the certificate of pending litigation must be described in a manner satisfactory to the registrar.

B. Cancelling a CPL

[20] The defendants submit that a judge of this Court retains the inherent jurisdiction to cancel a CPL that does not meet the pre-conditions in s. 215(1) of the LTA, citing *Yi Teng Investment Inc. v. Keltic (Brighthouse) Development Ltd.*, 2019 BCCA 357 [Yi Teng] at para. 31.

[21] When considering whether the pre-conditions required in s. 215(1) of the LTA have been met, the court is to assume that the pleaded facts are true. The defendants argue that, if those facts assumed to be true would not give rise to an interest in land, they are incapable of supporting such a claim and the pleadings do not meet the threshold requirements to obtain a CPL, citing *Yi Teng* at para. 39. They say that the pleadings the court must assess when determining the validity of a CPL are those filed in support of the CPL, and not

subsequently amended pleadings. They argue that the court is not to assess whether the pleadings could be amended to cure the defect, but rather only whether the pleadings filed with the CPL in the Land Titles Office support a claim to an interest in land, citing *Bilin v. Sidhu*, 2017 BCCA 429 [Bilin] at para. 62.

- [22] The defendants submit that a court is not to consider evidence about the underlying claim or to assess its merits when considering whether a CPL must be cancelled for failure to meet the pre-conditions in s. 215(1) of the LTA, citing *Nouhi v. Pourtaghi*, 2019 BCSC 794 [Nouhi] at para. 13. They assert that Mr. Hans improperly replaced the NOCC attached to the CPL with the ANOCC and that the CPL ought to be declared invalid on this basis alone. However, they argue there is no legal basis for the CPL pleaded in either the NOCC or the ANOCC and that none of the pleaded facts discloses an interest at law in the Property. Because they say the pleadings failed to disclose a claim to an interest in land when the CPL was filed, they submit that the CPL was never valid and ought to be cancelled: *Nouhi* at para. 30.

VI. ANALYSIS AND CONCLUSIONS

A. What is the defendants' remedy if they disagree with the Order?

- [23] Rule 23-6(8.1) provides that an appeal from the order of a master must be brought within 14 days after the order or decision is made. A filed copy of the notice of appeal and the appellant's statement of argument must be served within 7 days thereafter: R. 23-6(8.2). The defendants did not take those steps. The Order has been in place for more than three years since it was made in December 2018.
- [24] The defendants do not seek an extension of the time within which to appeal the Order. Rather, they submit that, because the Master had no jurisdiction to make the Order, it is invalid and a nullity. By extension, they say there was no basis in law for the Order requiring them to post the Funds as security when the CPL was removed from title to permit the Sale of the Property.
- [25] In my view, if the defendants wished to challenge any substantive, procedural, or jurisdictional aspect of the Order, their remedy was an appeal. They did not pursue an appeal. By asking me, more than three years after the Order was made, to determine the validity of the CPL based on the pleadings in place when it was filed, they effectively seek a re-hearing of the application before Master Caldwell. I decline to proceed in that manner.
- [26] In *Hamilton v. Pearce*, 2001 BCSC 1092, Justice Martinson addressed a litigant's request to reconsider a decision of this Court at paras. 12 - 14 and 34. While made in the context of a family law dispute, her comments are apposite. She noted that court orders are binding, subject to an appeal.
- [27] This decision is consistent with the one reached by Justice Saunders in *Kikla v. Ayong*, 2015 BCSC 2067 where he stated as follows:

- [34] In respect of the July 10th hearing, Ms. Kikla invites me to look behind the entered order and consider whether the transcript discloses Joyce J. having made an order in the form in which it was entered. No Rule permits me to look behind an entered order. FVCC was given notice of the hearing to settle the terms of that order, and chose not to attend or seek an adjournment of the hearing. I am, in any event, completely satisfied that the form of the order reflects fully what was said and what was intended by Joyce J.
- [35] To some extent, the submissions made by Ms. Kikla in respect to the July 10th hearing are tantamount to a re-arguing of her position. If Ms. Kikla was unhappy with the result of the July 10th hearing, her remedy was to appeal. She chose not to do so. [Emphasis added]
- [28] Similarly, in *Kakavelakis v. Boutsakis*, 2014 BCSC 1145, Justice G.C. Weatherill held (at para. 125) that, if a litigant disagrees with a decision of the Court, his remedy is to appeal. In *Her Majesty the Queen v. B & B Barges Ltd.*, 2021 BCSC 279, Justice Sharma confirmed that, if a party wishes to allege an error in a court order, their remedy is an appeal.
- [29] I reach the same conclusion here. Absent an appeal, the parties are bound by the Order, pending a final determination by the trial judge.

B. Is this application barred by the doctrine of *res judicata*?

- [30] Mr. Hans submits that this application is barred by the doctrines of *res judicata* and issue estoppel. He says this application, and the one before Master Caldwell, both involved:
- a) The same parties; and
 - b) The same question (namely, the validity of the CPL under s. 215 of the LTA).
- [31] Mr. Hans argues that all the same parties had an opportunity to (and in fact did) make submissions before Master Caldwell regarding the validity of the CPL. He submits that, in the absence of an appeal, the Order (while interlocutory in nature) is, in effect, final and binding, citing *Tung* at para. 8 and *Paterson v. Reeves*, [2002] BCJ No. 2120 at para. 27.
- [32] The trial of this action is set to proceed next month. It is open to the trial judge to consider whether the plaintiff's pleading discloses an interest in land, as required by s. 215 of the LTA, and how the Funds ought to be distributed when making final orders.

C. Did the Master have jurisdiction to cancel the CPL?

- [33] The defendants submit that a master has no jurisdiction to determine the validity of a filed CPL, or to cancel it for non-compliance with s. 215 of the LTA, citing *Fritz v. 848 Yates Nominee Ltd.*, 2019 BCSC 1294 at para. 11 [Fritz]. They deny their failure to raise a master's jurisdiction to decide that issue at the time the Order was made is fatal to this application. They maintain this Court always retains inherent jurisdiction to cancel a CPL if it was invalid when filed, citing *Nouhi* at para. 30.

[34] Mr. Hans submits that Fritz is wrong in law. He says the decision of Master Keighley in *Main v. Main*, 2006 BCSC 1876, cancelling a CPL on the basis the plaintiff's claim for an interest in the land in question had no merit, supports his position that a master has jurisdiction to make this determination.

[35] Supreme Court Civil Rules 23-6(1) and (2) provide as follows:

Powers of a master

- (1) Without limiting any other powers of a master under these Supreme Court Civil Rules, a master hearing an application has the powers of the court set out in Rules 8-5(6) to (8) and 22-1(2) to (8).

Master as registrar

- (2) A master has the powers and jurisdiction of a registrar under these Supreme Court Civil Rules.

[36] Practice Direction 50 provides an exhaustive list of a master's jurisdiction to make final orders as follows:

8. Subject to constitutional limitations and to the direction set out in paragraph 3, a master has jurisdiction to make the following final orders:
 - a. orders by consent;
 - b. orders under Supreme Court Civil Rule 22-7 and Supreme Court Family Rule 21-5;
 - c. orders for summary judgment under Rule 9-6 where there is no triable issue; and
 - d. orders striking out pleadings under Rule 9-5(1) provided there is no determination of a question of law relating to issues in the action.

[37] The defendants brought their application before Master Caldwell pursuant to R. 9-6. It is unclear whether Practice Direction 50 was raised by the parties in Fritz.

[38] Section 11.3(2) of the Supreme Court Act provides as follows:

(2) Subject to the limitations of section 96 of the Constitution Act, 1867, a master has the same jurisdiction under any enactment or the Rules of Court as a judge in chambers unless, in respect of any matter, the Chief Justice has given a direction that a master is not to exercise that jurisdiction.

[39] At the time of the Order, there was no direction from Chief Justice Hinkson precluding a master from ruling on the validity of a CPL under s. 215 of the LTA.

[40] My decision that the defendants' remedy, if they disagreed with the Order, was an appeal is dispositive of the application before me. Accordingly, I need not consider whether a master has jurisdiction to determine the validity of a CPL and I decline to do so.

VII. DISPOSITION

[41] The application is dismissed, with costs in the cause.

"Douglas J."

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