

CANADA / JUDGMENT

Hirji v. The Owners Strata Corporation Plan VR 44

2020 BCCA 285

COURT

British Columbia Court of Appeal

DECIDED

23 October 2020

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2020 BCCA 285 Hirji v. The Owners Strata Corporation Plan VR 44

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Hirji v. The Owners Strata Corporation Plan VR 44,

2020 BCCA 285

Date: 20201023

Docket: CA46384

Between:

Mohd Ali Hirji, also known as Mohamedali Hirji Mohamed Lalani,

and Parin Mohd Ali Hirji, also known as Parin Mohamedali Hirji Lalani

Appellants

(Plaintiffs)

And

The Owners Strata Corporation Plan VR 44

Respondent

(Defendant)

Before:

The Honourable Mr. Justice Goepel

The Honourable Mr. Justice Hunter

The Honourable Mr. Justice Voith

On appeal from: An order of the Supreme Court of British Columbia, dated September 12, 2019 (Hirji v. The Owners Strata Corporation Plan VR 44,

2019 BCSC 2356, Vancouver Docket S195308).

The Appellant, appearing in person

(via videoconference):

M.A. Hirji

Counsel for the Respondent

(via videoconference):

R.A. Shaw

Place and Date of Hearing:

Vancouver, British Columbia

September 30, 2020

Place and Date of Judgment:

Vancouver, British Columbia

October 23, 2020

Written Reasons by:

The Honourable Mr. Justice Voith

Concurred in by:

The Honourable Mr. Justice Goepel

The Honourable Mr. Justice Hunter

Summary:

The judge dismissed the appellants' action under Rule 9-5(1) of the Supreme Court Civil Rules on the basis that it was a collateral attack on various judgments relating to a previously dismissed action brought by the appellants. He also declared the appellants vexatious litigants under s. 18 of the Supreme Court Act. The appellants challenge both conclusions. Held: Appeal dismissed. The judge made no error in striking the action on the basis that it was an abuse and was unnecessary, scandalous, frivolous and vexatious, or in declaring the appellants vexatious litigants.

Reasons for Judgment of the Honourable Mr. Justice Voith:

- [1] This appeal arises out of a judgment, made under Rule 9-5(1) of the Supreme Court Civil Rules, B.C. Reg. 168/2009, dismissing Action No. S195308 (the "New Action") and declaring the appellants vexatious litigants under s. 18 of the Supreme Court Act, R.S.B.C. 1996, c. 443 (the "Act").
- [2] The chambers judge, following a two-day hearing, issued reasons for judgment that are indexed at 2019 BCSC 2356. In those reasons he concluded that the New Action should be dismissed under Rule 9-5(1)(b) and (d) on the basis that the New Action was a collateral attack on various judgments that had earlier been made in Action No. S070817 (the "Original Action"). He further determined that the appellants' conduct in commencing the New Action, together with their failure to pay a special costs award in the Original Action, warranted an order under s. 18 of the Act. Still further, he ordered special costs against the appellants as a result of their conduct in the New Action.

Background

i) The Original Action

- [3] The appellants commenced the Original Action against the respondent and others on February 7, 2007. In the Original Action, the appellants claimed damages in excess of \$1 billion, in negligence and breach of contract, against the respondent strata corporation for its alleged failure to maintain common property adjacent to the appellants' strata unit.
- [4] The appellants amended their pleadings numerous times over the course of more than seven years of litigation and filed a ninth amended statement of claim during trial. The trial of the Original Action occupied 22 days and concluded on May 8, 2015. Mr. Hirji represented himself and his wife at trial.
- [5] On November 6, 2015, in reasons for judgment that are indexed at 2015 BCSC 2043, the trial judge dismissed all of the appellants' claims. After a further hearing on February 22, 2016, the trial judge delivered reasons on the respondent's application for special costs. She concluded, in reasons for judgment that are indexed at 2016 BCSC 548 (the "Special Costs Reasons"), that an award of special costs against the appellants was justified on various grounds.
- [6] Special costs were assessed against the appellants in the amount of \$919,549.26 and are reflected in an order of Registrar Cameron made April 24, 2017. The appellants have not made any payment in respect of that special costs order.

ii) The Appeal in the Original Action

- [7] The appellants filed a notice of appeal from the decision of the trial judge on November 26, 2015 but took no further steps in furtherance of that appeal. In January 2016, security for costs of the appeal was ordered in the sum of \$8000, and the appellants posted that amount. In August 2016, the appellants amended their notice of appeal to include 27 grounds of appeal. That Amended Notice of Appeal is important and I will return to it.
- [8] The appellants applied for an extension of time to file documents in the appeal. The application was heard by Madam Justice Newbury on September 14, 2016. In reasons for judgment indexed at 2016 BCCA 392, she denied the appellants' application and dismissed their appeal.
- [9] The appellants' application to vary the decision of Newbury J.A. was dismissed by a three-member division of this court on November 25, 2016.
- [10] The appellants subsequently sought leave to appeal to the Supreme Court of Canada. Their leave application was dismissed on April 27, 2017. Their application for reconsideration of that decision was denied on November 1, 2017.
- [11] The appellants have refused to pay the respondent's costs of the appeal, and the respondent has not pursued the costs that were awarded by the Supreme Court of Canada.

iii) The New Action

- [12] The chambers judge, in striking the New Action, described the general position of the appellants:
- [5] Mr. and Ms. Hirji oppose the application and provided both written submissions and oral submissions in support of their position. The focus is largely based on the need for the court having jurisdiction to correct a wrong, which in this case is largely argued as a fraud having been perpetrated against them, perpetrated by the applicant against the plaintiffs, and the improprieties and failures of the judges of the various courts that have touched the original action. The respondents rely upon their rights under the Canadian Charter of Rights and Freedoms, and as well the International Covenant on Civil and Political Rights and the rule of law.
- [13] The chambers judge also referred to a portion of the appellants' pleadings in the New Action and said:
- [14] The summary of facts as contained in the notice of civil claim can be found at paragraphs 16 to 22, and they read as follows:

On February 8, 2007, Hirjis commenced a lawsuit against the state authority of strata council owing to the neglect of their legal obligation from 1991 to 2007 to maintain and repair the common property of strata council. The strata's unreasonable refusal to grant the conduct of repairs in violence of strata bylaws prevented Hirjis to sell their house and inject the required capital into their currency arbitrage business.

On April 7, 2015, the trial commenced before the Supreme Court of British Columbia. Despite proving their burden of proof and the defendants' failures and negligence in breach of contract and unreasonable refusal of the defendants to grant the conduct of repairs on the same terms and conditions granted the other owners and the damages they have suffered on a preponderance of evidence and balance of probabilities, the court refused, failed to act legally and dismissed Hirjis' case.

The trial court of the Supreme Court of British Columbia unlawfully omitted all of Hirjis' exculpatory evidence in reasons for judgment and fabricated the evidence in the reasons for judgment rendered on November 6, 2015, and denied justice to the Hirjis. The trial court willfully admitted fabricated and inadmissible evidence of the defence witness into evidence that renders the trial unfair.

The trial court violated Hirjis' rights to a fair trial before a competent, impartial and independent tribunal as envisioned in article 14(1) of ICCPR and rendered the decision that is null and void in law and that is unenforceable in law, has no legal force of effect.

Hirjis filed numerous appeals to hire courts for the reconsideration of the trial court judgment, including Supreme Court of Canada requesting a review of unlawfully imposed miscarriage of justice on them.

In their appeals Hirjis has [sic] repeatedly claimed that their fundamental rights for a fair trial and constitutional rights were violated both during the trials and chambers hearing. None of the courts substantively addressed the claims raised by the Hirjis in their appeals.

All courts upheld the fraudulent and unlawful acts of lower instance court's decision of November 6, 2015, imposing a miscarriage of justice on Hirjis and defrauding them of their legitimate claim for damages that the Hirjis are entitled to under law.

The Position of the Appellants on this Appeal

[14] The appellants argue that the chambers judge erred when he concluded that the appellants were endeavouring, in the New Action, to "relitigate the issues covered in the original action", that the New Action was "an abuse and unnecessary, scandalous, frivolous and vexatious", and that "[t]he wrongs at the heart of the Hirjis' complaints were litigated and reviewed at all available levels of court in Canada."

[15] They also appeal his determination that "an order be issued that the [appellants] cannot institute any legal pleadings in any registry of this court against the [respondent] without leave of the court or until payment in full has been made of the outstanding costs order against them made April 24, 2017, by this court in action S070817."

[16] The appellants did not challenge the chambers judge's order of special costs as a result of their conduct in the New Action in either their factum or oral submissions.

Discussion

i) The First Issue

- [17] The appellants' amended factum, and the oral submissions of Mr. Hirji, emphasize that the New Action is based on a "fraud on the court." That fraud is said to have been based on dishonest evidence given by witnesses of the respondent. The fraud is further said to have been perpetuated by counsel at the original trial and by the trial judge who is alleged to have "fabricated findings of fact" and to have "intentionally abused the judicial powers of the court." Mr. Hirji's central submission is that these allegations, and this new cause of action, were not advanced in the Original Action.
- [18] This central submission is belied by aspects of the various reasons for judgment, at trial and on appeal, that were issued in the Original Action and by the Amended Notice of Appeal that the appellants filed in relation to the trial judgment.
- [19] Thus, in the Special Costs Reasons, and in relation to the purported dishonesty of the witnesses and counsel for the respondent, the trial judge said:
- [8] I conclude this is one of those rare cases where an award of special costs is justified on more than one of the grounds mentioned in the case law referenced above. One of the strongest grounds is that during cross-examination of the personal defendants and final submissions, the plaintiffs made unfounded allegations of bad faith, malice and dishonesty against the personal defendants despite discontinuing the action against them before trial. There was no evidence to support a claim of bad faith or dishonesty against any of the personal defendants. The plaintiffs' allegations rested on pure speculation and Mr. Hirji's persistent paranoia.
- [9] The plaintiffs levelled the same type of allegations of bad faith against VR 44. Those were equally unfounded.
- [10] What I find particularly reprehensible, is the fact that the plaintiffs continued to level serious allegations of misconduct against counsel that appeared in front of me (Mr. Eged), and VR 44's former counsel (Mr. Bleay). Mr. Hirji has filed affidavits and sent correspondence in which he makes numerous spurious allegations which call into question both counsel's ethics, honour and professional integrity. Mr. Hirji went so far as to copy an email full of these groundless allegations to all the other lawyers at Mr. Eged's law firm as well as distributing the email to people outside the firm. At the costs hearing, Mr. Hirji attempted to bring forward allegations that VR 44 fabricated evidence and that Mr. Eged misled the court during the trial.
- [20] In dismissing the appellants' original appeal, and in relation to the alleged dishonesty of the trial judge, Newbury J.A. said:

- [12] It is on the questions of prejudice, the merits of the appeal and the interests of justice, however, that this appeal will turn. As far as merit is concerned, I took considerable time during the hearing of this application in attempting to determine the errors in judgment Mr. Hirji intends to advance as grounds for his appeal. Aside from his continued references to "fabricated" evidence and his aspersions against the trial judge, he pointed me repeatedly to some comments made by Mr. Justice Silverman, sitting in chambers on July 7, 2009.
- [21] I note parenthetically that what Mr. Justice Silverman purportedly did or said, in the context of the Original Action, was also something that Mr. Hirji referred to and relied on repeatedly in his submissions on this appeal.
- [22] Perhaps most telling is the Amended Notice of Appeal that the appellants filed in the Original Action. I have quoted from that document at length because it reveals and confirms that the issues the appellants seek to raise in the New Action, both in relation to the conduct of the trial judge and the conduct of counsel for the respondent, mirror the issues that were raised in the appeal of the Original Action. Specifically, the Amended Notice of Appeal states:
- ...
6. The trial judge is in violation and fundamental breach of trust and law.
 7. The trial judge violated s. 15 of Canadian Charter of Rights and Freedom.
 8. The trial judge violated the oath of office.
 9. The trial judge violated the oath and pledge of allegiance to uphold the rule of law under the Canadian constitution.
 10. The trial judge's acts constitute acts of treason against the state.
 11. The trial judge wilfully declined/refused the plaintiffs request to correct the erroneous reason for judgment brought to the attention of trial judge on more than one occasion.
 12. The trial judge unreasonably and wilfully inflicted the injuries on the plaintiffs and unreasonably imposed the burden of appeal court costs on the plaintiffs.
 13. The trial judge wilfully misstated the facts in reason for judgment rendered on November 6, 2015 and March 30, 2016.
 14. The trial judge failed to follow the rule of law in compliance with the constitution.
 15. When the trial judge fails to act in compliance with the supreme law of the land the trial judge loses subject-matter jurisdiction and the trial judge's orders are not voidable, but they are VOID.
 16. The defense counsels are in violate and fundamental breach of trust of court and fundamental breach of law.

17. The defense counsels wilfully committed fraudulent and criminal acts against the plaintiffs in violation of Criminal Code s. 139 and s. 131.
18. The defense counsel wilfully obstructed the course of justice to defeat the course of justice.
19. The defense counsels wilfully misled the court by wilfully misstating the facts and misleading the court.
20. The defense counsels wilfully fabricated the evidence in the trial, and wilfully attempted to obstruct, pervert and defeat the course of justice.
21. The defense counsels wilfully attempted to defraud the plaintiffs out of their entire lives savings and assets and possessions by their fraudulent and criminal acts.
22. The trial judge's false, fabricated and erroneous decision rendered on November 6, 2015 and February 22, 2016 is reversed.

...

- [23] Appellate intervention in connection with a discretionary decision made under Rule 9-5(1) is appropriate only where a hearing judge has proceeded on an erroneous principle or failed to give weight, or sufficient weight, to relevant considerations: *Greengen Holdings Ltd. v. British Columbia (Ministry of Forests, Lands and Natural Resource Operations)*, 2018 BCCA 214 at paras. 24-25; *Timberwolf Log Trading Ltd. v. British Columbia (Forests, Lands and Natural Resources Operations)*, 2013 BCCA 24 at para. 19.
- [24] It is patent that the appellants seek, in the New Action, to revisit and relitigate many of the issues they raised in the Original Action and in the appeals from that action. The chambers judge made no error in striking the New Action on the basis that it was an abuse and that it was unnecessary, scandalous, frivolous and vexatious.

ii) The Second Issue

- [25] Section 18 of the Act allows a judge of the Supreme Court, if "satisfied that a person has habitually, persistently and without reasonable grounds, instituted vexatious legal proceedings", to "order that a legal proceeding must not, without leave of the court, be instituted by that person in any court." The inherent jurisdiction of the Supreme Court is another source of that same authority: *Gichuru v. Pallai*, 2018 BCCA 78 at para. 74.
- [26] Orders made under s. 18 of the Act constitute a drastic measure, and the authority under s. 18 must be exercised with caution. Nevertheless, it is a power that may be exercised, in the public interest, when necessary to prevent habitual and serious abuse of the process of the courts: *Hokhold v. Gerbrandt*, 2017 BCCA 216 at para. 21; *S. v. S.* (1998), 60 B.C.L.R. (3d) 232 at para. 13 (C.A.).
- [27] There are various indicia of a pattern of vexatious litigation that will support an order made under s. 18. Many of those indicia are present in this case. This includes new proceedings that are brought to determine issues already decided by a court of competent jurisdiction,

issues being raised that obviously cannot succeed, relief being sought that no reasonable person could reasonably hope to obtain, and failure by the alleged persistent litigant to pay the costs of other, earlier and unsuccessful, proceedings: *Dickson v. Vancouver City Savings Credit Union*, 2007 BCCA 454 at paras. 18-19; *Bryfogle v. School District No. 49*, 2009 BCCA 256 at paras. 18-19; *Callow v. School District No. 45 (West Van.)*, 2004 BCCA 19 at paras. 4-7. The reasons of the chambers judge, directly or indirectly, referred to each of these indicia and supported the order he made.

[28] The original events underlying these actions allegedly began in 1998. The first statement of claim in the Original Action was filed in 2007. The decision of Madam Justice Newbury dismissing the appellants' appeal in the Original Action was made more than four years ago. In that decision she said, at para. 18, that "it is time for this litigation to come to an end." The orders of the chambers judge properly seek to achieve that end.

Conclusions

[29] I would dismiss the appeal and award the respondent its costs of the appeal.

"The Honourable Mr. Justice Voith"

I AGREE:

"The Honourable Mr. Justice Goepel"

I AGREE:

"The Honourable Mr. Justice Hunter"

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Prepared on 30 October 2026 · Esheria