

CANADA / JUDGMENT

## ICBC v. Dick

2020 BCCA 199

COURT

British Columbia Court of Appeal

DECIDED

14 July 2020

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2020 BCCA 199 ICBC v. Dick

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

ICBC v. Dick,

2020 BCCA 199

Date: 20200714

Docket: CA45888

Between:

Insurance Corporation of British Columbia

Respondent

(Plaintiff)

And

Rodney Daniel Dick

Appellant

(Defendant)

Before:

The Honourable Madam Justice Saunders

The Honourable Madam Justice Fenlon

The Honourable Madam Justice DeWitt-Van Oosten

On appeal from: An order of the Supreme Court of British Columbia, dated January 16, 2019 (ICBC v. Awla, Vancouver Docket S076183).

The Appellant, appearing in person:

R.D. Dick

Counsel for the Respondent:

M. Hewitt

Place and Date of Hearing:

Vancouver, British Columbia

June 23, 2020

Place and Date of Judgment:

Vancouver, British Columbia

July 14, 2020

Written Reasons by:

The Honourable Madam Justice Saunders

Concurred in by:

The Honourable Madam Justice Fenlon

The Honourable Madam Justice DeWitt-Van Oosten

Summary:

The appeal is from an order denying leave to amend a statement of defence and counterclaim and an order that the Supreme Court of British Columbia Registry refuse to file further material presented in the action by the appellant, with permission to destroy such material. Leave was required because an order in the Supreme Court of British Columbia prevents the appellant from filing any application in extant legal proceedings without first obtaining leave to do so. Judgment was given after trial against the appellant (and many other defendants) eight years ago. That order was not appealed. Judgment was given five years ago dismissing his counterclaim. The appeal from dismissal of the counterclaim was dismissed and the Supreme Court of Canada refused leave to appeal the judgment of this court. Held: Appeal dismissed. The Supreme Court of British Columbia is functus officio on the claim and counterclaim. That is, the action in the Supreme Court of British Columbia is at an end. In the circumstances the order directing the Registry with respect to newly presented documents was not an error.

Reasons for Judgment of the Honourable Madam Justice Saunders:

- [1] Mr. Dick appeals the Supreme Court of British Columbia order made by Mr. Justice Grauer on January 16, 2019, denying him leave to bring an application to amend his statement of defence and counterclaim in this action which was tried in 2011 (the main claim) and 2015 (the counterclaim). The action number is No. S076183 Vancouver Registry. The order

appealed, although dismissing an application to declare him a vexatious litigant, also enjoined Mr. Dick from filing any document in the Registry of the Supreme Court of British Columbia connected with the subject matter of the proceeding in Supreme Court of British Columbia Vancouver Registry No. S076183. The order denying Mr. Dick the ability to file any further documents is commonly described as a Houweling order after the case *Houweling Nurseries Ltd. v. Houweling*, 2010 BCCA 315, which fashioned such an order to bring an end to misuse of the litigation process caused by repetitive filing of unmeritorious applications.

- [2] The sequence of events determines the result of the appeal, in my view, and so I will set them out in some detail. This litigation was started in 2007 by the Insurance Corporation of British Columbia against many defendants, one of whom was Mr. Dick. ICBC alleged large scale fraud and conspiracy to defraud against various defendants, and conversion against other defendants who became entangled by the fraudsters' schemes. Against Mr. Dick they alleged conversion in respect of two automobiles. Mr. Dick filed a statement of defence and a counterclaim. He brought several applications in respect of his counterclaim before the trial of the action. The counterclaim was severed from the trial of the claim.
- [3] The claim was tried before Associate Chief Justice Cullen in November and December 2011. Mr. Dick testified at trial. Associate Chief Justice Cullen described Mr. Dick's evidence:
- [80] Mr. Dick was called in the plaintiffs' case. He agreed that in 2002 he was in "dire financial straits". He went to see Allen Ferrier at GVCCU to see about getting a loan for a vehicle. It was a green Silverado truck he had been shown by someone named Harp who had the vehicle for sale.
- [4] Mr. Dick was found liable in conversion and damages were awarded against him in the amount of \$26,614.31, plus court order interest:
- [364] I am satisfied that the plaintiff has made out its claim against the defendant Rodney Dick in conversion. Although he has launched a counterclaim against the plaintiff, that counterclaim has been severed off from the trial and does not fall to be determined at this juncture.
- [365] Mr. Dick was a purchaser who paid conspicuously less than the apparent and insured value of the vehicle. He like Mr. Smith and Ms. McDonald financed the vehicle through Allen Ferrier at GVCCU purporting to pay \$25,000 for it, but receiving only \$16,000 by way of loan from GVCCU and being unable to account for the payment of the remaining \$9,000.
- [366] When Mr. Dick reported Revin 59 stolen, he falsely reported that he paid \$35,000 for it and he received \$39,679.25 (with GVCCU) from ICBC as a result of his theft claim. He purchased the vehicle from Harpreet Awla, not from Ms. Choong, the purported registered owner. In my view, the plaintiff has established that Revin 59 was Vehicle 41 given its similarities and the fact that no other vehicle resembling Revin 59 was reported stolen or recovered, except for Vehicle 41. Accordingly, I am satisfied that the plaintiff has made out its claim in conversion against Mr. Dick entitling them to damages in the amount of \$26,614.31 plus

interest. As Mr. Dick's counterclaim is not being litigated in the context of this action, I make no express findings with respect to his knowledge or wilful blindness as to the status of Revin 59 when he acquired it and possessed it as it is not necessary to a finding of liability for conversion.

[5] Mr. Dick has not appealed from that judgment against him.

[6] In 2015, Mr. Dick sought to advance his counterclaim and ICBC applied for an order dismissing it. Mr. Dick then applied to amend the counterclaim. The court directed that the counterclaim be tried by summary trial. The original counterclaim pleaded, in its entirety:

I, Rodney Daniel Dick, purchased two trucks mentioned in the statement of claim. I was told the vehicles were written off, rebuilt, and imported into BC.

Before purchasing I had the vehicles searched for liens and accidents. They were said to be imported from outside of BC but were registered. I received a transfer paper from the other party and transferred the truck into my name.

I have purchased over 25 vehicles, over 2 million dollars spent on purchasing these vehicles and other construction equipment.

The defendant claims as follows: (a) \$36,000 for repayment of the loss of value for 2003 2500 Chevrolet Silverado.

[7] Associate Chief Justice Cullen recognized that the counterclaim, even amended, did not plead a legal wrong or allegation of wrongdoing on the part of ICBC, but he found enough in it to treat the counterclaim as a claim of negligence on the part of ICBC in relation to vehicle registration. This aligned with Associate Chief Justice Cullen's understanding of Mr. Dick's complaints about ICBC's vehicle registration system, and aligns with my understanding of Mr. Dick's position, being that the fault with respect to the claim (and consequent judgment) against him lay in ICBC's administration of vehicle registration.

[8] After a summary trial on December 11, 2015, Associate Chief Justice Cullen dismissed the counterclaim. In doing so he set out the history of the counterclaim and said that Mr. Dick's pleadings were "at best confusing and diversionary". He set out the original text of the counterclaim and said:

[8] On August 24th of 2015, counsel for ICBC brought an application to dismiss the counterclaim, and Mr. Dick filed an amended counterclaim. While it too was confusing and alleged no clear cause of action, I dismissed ICBC's application to strike his pleadings on the basis that a claim of negligence could be discerned from his amended counterclaim.

[9] Mr. Dick has adduced some evidence in support of his counterclaim. It appears largely to be an attempt to present evidence that he was not aware of, or wilfully blind to, the fact that the vehicles he was involved with were stolen. That was not evidence that he called at the main trial, but even if accepted it would not have altered the basis of his liability for conversion.

- [10] As I understand the thrust of his argument in the present case, it is that if ICBC had subjected the various stolen vehicles and the disguised vehicle registrations to scrutiny, it may have prevented their purchase by Mr. Dick as he sought to re-register them in his name.
- [18] I conclude that the evidence before me fails to establish a standard of care or the breach of a duty of care, if indeed there is one. While I accept the reasoning in [Sturgeon v. Lui, [1988] B.C.J. No. 2379] and [Insurance Corp. of British Columbia v. Scheelar, 2003 BCSC 677], buttressed as it appears to be in [Cooper v. Hobart, 2001 SCC 79] that ICBC as a registrar does not owe a duty of care to registrants, in view of the lack of any coherent argument from Mr. Dick, I prefer to base my decision on there being no or insufficient evidence in the particular circumstances of this case of there being a breach of a duty of care to the plaintiff by counterclaim, Mr. Dick, and no evidence of a standard of care to measure ICBC's conduct against.
- [19] In my view that is sufficient to dispose of this application and Mr. Dick's counterclaim, which I dismiss. He has been given every opportunity to marshal evidence either to resist ICBC's claim against him at the trial or to advance his counterclaim. He has not done so, and accordingly I conclude that it is appropriate to grant judgment in favour of ICBC by dismissing this counterclaim on the basis of a lack of necessary evidence of a breach of the duty of care by the defendant and on the basis that given the opportunities which Mr. Dick has had to present his claim, it would not be unjust to do so. The action is dismissed, and the costs will follow the event.
- [9] Mr. Dick appealed from the dismissal of his counterclaim. On October 20, 2016, this court dismissed the appeal for reasons indexed as 2016 BCCA 419. On April 13, 2017, the Supreme Court of Canada dismissed Mr. Dick's application for leave to appeal the dismissal order. See [2017] 1 S.C.R. ix.
- [10] On August 28, 2017, in British Columbia Supreme Court file No. 042966 Vancouver Registry, Mr. Justice Jenkins declared Mr. Dick a vexatious litigant, enjoined Mr. Dick from commencing any new actions, and barred him from filing any notice of hearing, notice of application, or notice of trial in any extant civil proceedings without leave of the court, naming in particular two Supreme Court proceedings other than this one.
- [11] On December 18, 2017, Mr. Dick filed an application to amend his statement of defence and counterclaim in this proceeding. That application was withdrawn, we are told, as a result of the vexatious litigant order of Justice Jenkins. Also, on July 19, 2018, in other legal proceedings, Madam Justice Fitzpatrick declared Mr. Dick a vexatious litigant.
- [12] On June, 2018, Mr. Dick sought leave, without notice to ICBC, to amend his statement of defence and counterclaim in this action, No. S76183 Vancouver Registry. The application was dismissed.

- [13] We then come to November 28, 2018, when ICBC applied for an order declaring Mr. Dick a vexatious litigant. This application was heard on January 16, 2019. At the hearing, Mr. Dick put before the judge the requisition seeking to amend the statement of defence and counterclaim.
- [14] In dismissing Mr. Dick's application, Justice Grauer said:
- [7] [Mr. Dick] now says that he needs a proper court hearing on the merits, with the evidence that he would like to put in, which was not, he maintains, considered before. He is here today, he says, to defend himself. He was never properly involved in the court case and had no proper trial.
- [8] In short, he is seeking a retrial of the case insofar as it resulted in a judgment against him.
- [9] I cannot comment on the evidence Mr. Dick has put forward as supporting his proposed application to amend his pleadings, except to say this: in the context of these court proceedings, it is now far too late and amounts to an abuse of process. The judgment was rendered many years ago now. It was not appealed. His other steps to pursue his counterclaim were dismissed and his appeals unsuccessful. It is not now open to the court to retry a matter which was finalized years ago.
- [10] So his requisition for leave as a vexatious litigant (as declared generally by Mr. Justice Jenkins) to bring this application is denied.
- [15] He then turned to ICBC's vexatious litigant application. He said:
- [11] I have some difficulty with ICBC's application, not because of any merit to Mr. Dick's position, but because this is the first time he pursued to this stage this particular application. It is not necessary for me to find him a vexatious litigant in the context of this specific litigation because he has been declared such already and is aware of that. As far as I know, he has not sought to hide that from the court registry.
- [12] Moreover, the order ICBC seeks would prevent him from commencing any kind of legal proceedings against ICBC, and that perhaps goes a little too far beyond the scope of the litigation in which he has been involved to date.
- [13] I am therefore not going to allow ICBC's application.
- [14] Mr. Hewitt then sought a Houweling order, which the court can pronounce of its own motion, which would prevent Mr. Dick from even seeking leave for any further applications.
- [15] I am prepared to grant that order, but only in the context of this specific litigation. It seems to me that Mr. Dick's pursuit of matters not only through the appeal process, which of course he is entitled to do as of right, but with further attempts then to circumvent that process through proposing to amend and restart the litigation, and having met now with roadblocks three times, justifies and order that Mr. Dick, or anyone acting on his behalf, shall not file any document in the registry of this Court in any way connected with the subject matter of

this proceeding, being Vancouver Registry No. S076183, Insurance Corporation of British Columbia v. Awla and others.

- [16] This does not apply to an application for leave to appeal or a notice of appeal from my decision. That can be done without any leave of me or this court.
- [16] Mr. Dick does not identify an error on the part of Justice Grauer but repeats submissions made that as a result of the way the case progressed he has not presented his defence to the claim, either fully or at all. He says he gave his evidence as an "adverse witness", and did not take an active role in the trial, with the result he has never properly advanced his defence. He says further that when he tried to advance his counterclaim he was unable to challenge the findings made at the trial at which judgment was given against him. The fault that led to ICBC's claim against him lies, he says, with its management of vehicle registration, and he says he should be able to have a proper trial on that issue. Mr. Dick accordingly seeks to set aside the dismissal of his application to amend pleadings in order to enable him to re-open the trial. I do not understand Mr. Dick to raise any particular complaint about the Houweling order, but he opposes it in principle. I understand him to say he should not be prevented from filing documents in this case which, he says, wrongly found him liable in damages.
- [17] I consider the appeal must be dismissed. The order imposing liability on Mr. Dick was made nearly eight years ago and was never appealed, nor were there any attempts to do so. The time for doing so has expired years ago. The counterclaim was tried more than five years ago and dismissed. That order was unsuccessfully appealed in this court, and the Supreme Court of Canada declined to hear an appeal from this court's order. The counterclaim is at an end.
- [18] There is no basis to allow Mr. Dick to amend his statement of defence because judgment has been given on the claim and that order was not appealed. There is no basis to allow him to amend the counterclaim because it was dismissed, as was his appeal. Putting the two pieces of claim and counterclaim together and applying the principle of finality of process which is vital to the proper administration of justice, this litigation between ICBC and Mr. Dick reached its final conclusion long ago. In legal terminology, the Supreme Court of British Columbia is *functus officio* on the action. Clearly the leave application Mr. Dick brought was bound to fail.
- [19] As to the Houweling order, the fact that this action was over years ago but we are still here today on Mr. Dick's efforts to revive it demonstrates the wisdom of allowing no further filings in the Supreme Court of British Columbia in the completed action. I conclude that the judge made no error in making an order prohibiting further filings, or in authorizing the Registry of the Supreme Court of British Columbia to discard any new document presented for filing.
- [20] I would dismiss the appeal.

"The Honourable Madam Justice Saunders"

I agree:

"The Honourable Madam Justice Fenlon"

I agree:

"The Honourable Madam Justice DeWitt-Van Oosten"

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