

CANADA / JUDGMENT

Jacques v. Muir

2020 BCSC 1258

COURT

Supreme Court of British Columbia

DECIDED

27 August 2020

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2020 BCSC 1258 Jacques v. Muir

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Jacques v. Muir,

2020 BCSC 1258

Date: 20200827

Docket: S195852

Registry: New Westminster

Between:

Chang Jacques

Plaintiff

And

Jennifer Muir

Defendant

Before: The Honourable Mr. Justice Verhoeven

Reasons for Judgment

The Plaintiff, appearing in person:

C. Jacques

No other appearances

Place and Date of Judgment:

New Westminster, B.C.

August 27, 2020

Introduction

- [1] On November 24, 2017 Mr. Justice Blok made an order that: (1) dismissed these proceedings as an abuse of process; and (2) prohibited the plaintiff, Ms. Jacques, from advancing or commencing any further legal proceedings against the defendant in connection with the subject matter of the proceedings, or arising from or related to the subject matter of the allegations made against the defendant, without leave of the court. The latter order was made upon a finding that the plaintiff had habitually, persistently and without reasonable grounds instituted vexatious legal proceedings against the defendant, thus justifying a vexatious litigant order pursuant to s. 18 of the Supreme Court Act, R.S.B.C. 1996, c. 443. Justice Blok's reasons for judgment are indexed as 2017 BCSC 2400.
- [2] On August 17, 2020, Ms. Jacques filed a requisition seeking, as I interpret it, leave to pursue proceedings to set aside the order of Justice Blok, and an award of damages against the defendant. The requisition was referred to me for a decision in accordance with the procedures set out in Administrative Notice 16, which applies to applications for leave by vexatious litigants to file process or documents with the court. Administrative Notice No. 16 requires the vexatious litigant to file a requisition in Form 17, which is then provided to a judge or master for review. In practical terms, such requisitions are applications to the court for leave. The judge or master need only endorse the requisition to indicate whether the request is granted or refused, or must be dealt with in chambers, either with or without notice to an intended defendant or respondent. Reasons for the decision are not required.
- [3] This appears to be the 15th such requisition that Ms. Jacques has filed with the court. All of the previous requisitions have been denied, by various judges of the court. In fact, a requisition almost identical to the one now before me was rejected by Mr. Justice Ball within the last month.
- [4] These reasons for judgment will explain why I am refusing Ms. Jacques' application, and why, in addition, I am making what is known as a "Houweling" order, prohibiting Ms. Jacques, or anyone acting on her behalf, from filing any document with this Court in any way connected with the subject matter of these proceedings, and authorizing the court registry staff to discard any document that is attempted to be filed in contravention of the order.

Background

- [5] Mr. Justice Blok's order of November 24, 2017 was appealed. The Court of Appeal dismissed the appeal on April 30, 2018. Its reasons for judgment are indexed at 2018 BCCA 174.

- [6] The reasons for judgment of the Court of Appeal succinctly summarized the circumstances as follows:
- [3] On November 12, 2012, Ms. Jacques underwent a total abdominal and bilateral salpingectomy performed by Dr. Muir. Ms. Jacques was dissatisfied with the results of the surgery and on April 16, 2014, commenced an action against Dr. Muir in the Provincial Court of British Columbia, alleging that the surgery had been performed negligently and without informed consent. I will refer to this as the First Action.
- [4] On July 13, 2015, the negligence claim in the First Action was dismissed but the claim based on lack of informed consent was permitted to continue. On October 8, 2015, a trial conference was held and the balance of the action based on a lack of informed consent was settled. As a term of the settlement, Ms. Jacques executed a release in favour of Dr. Muir. The release was in the usual form and had the effect of releasing Dr. Muir from any claim based on the consequences of the surgery.
- [5] Approximately seven months later, Ms. Jacques commenced a second action against Dr. Muir in the Provincial Court. This action claimed compensation in relation to surgery performed in China which was said to relate to the original surgery by Dr. Muir. This second Action was dismissed by a Provincial Court judge on June 21, 2016, on the basis that it was covered by the release.
- [6] Dissatisfied with this result, on December 22, 2016, Ms. Jacques filed an application in the Provincial Court seeking to re-open the First Action and to revoke the release. That application was dismissed on February 20, 2017 by Provincial Court Judge Low.
- [7] Ms. Jacques then appealed Judge Low's order to the Supreme Court of British Columbia. Associate Chief Justice Cullen dismissed this appeal, characterizing the argument as one of unconscionability, and pointing out that Ms. Jacques had not filed any evidence that would support such a claim.
- [8] An application for leave to appeal to this Court was dismissed on jurisdictional grounds, and the dismissal was upheld by a division of this Court on October 4, 2017.
- [9] Less than three weeks later, Ms. Jacques filed a third action against Dr. Muir based on the 2012 surgery, this time in the Supreme Court of British Columbia. This was followed a week later by the filing of a Petition in which Ms. Jacques sought to overturn the release.
- [10] Dr. Muir applied to have the Third Action dismissed as an abuse of process and also sought an order that Ms. Jacques be declared a vexatious litigant. On November 24, 2017, Justice Blok dismissed the Third Action on the following basis:

- [12] it is clear that Ms. Jacques is attempting to re-litigate issues that have been heard and decided by several court proceedings in the past: the "informed consent" claim by a settlement and release, and the question of the alleged unconscionability of the release by the application heard by Judge Low and the later appeal to Associate Chief Justice Cullen and ultimately to the Court of Appeal, although the latter was a jurisdictional decision. So these matters have been litigated before and cannot be litigated again.
- [13] For these reasons I agree that the current proceedings are an abuse of process. They are identical to relief arising out of the same facts as sought in prior resolved court proceedings. They are clearly an attempt to re-litigate a case that has already been decided, and so the action must be dismissed.
- [11] Justice Blok also issued the following order pursuant to s. 18 of the Supreme Court Act:
2. The Plaintiff is barred from advancing or commencing any further legal proceedings, including but not limited to interlocutory applications, against the Defendant in connection with the subject matter of these proceedings, or arising from or related to the subject matter of the allegations made against the Defendant, without leave of a Justice of this Court.
- [12] On December 6, 2017, Justice Blok dismissed the petition, which was the fourth proceeding commenced by Ms. Jacques relating to the surgery.
- [7] In dismissing the appeal of the order dismissing her claims against Dr. Muir, the Court of Appeal stated:
- [13] Ms. Jacques has appealed the November 24 order to this Court. Her submissions to us do not disclose any error by Justice Blok. They are primarily focused on her allegations that Dr. Muir performed the surgery unnecessarily. Ms. Jacques also makes a series of general allegations of perjury, obstructing justice and criminal negligence, none of which have any support in the evidence.
- [14] In addition, Ms. Jacques has argued before us that the release she signed should be set aside for unconscionability. That argument was addressed by Cullen A.C.J. in the appeal of the judgment of Judge Low on the application to re-open the First Action. Before us, Ms. Jacques has cited the decision of this Court in *Loychuk v. Cougar Mountain Adventures Ltd.*, 2012 BCCA 122, at para. 29 for the test to be applied. This was the argument and the citation made before Judge Low and repeated before Cullen A.C.J. Cullen A.C.J. dismissed the argument in these terms:
- [13] In my view there is no basis in the evidence on which to found a claim of unconscionability in this case. As pointed out by the respondent there is no affidavit evidence put before the court below to support such a claim, The appellant's position before the court consisted of submissions, arguments and assertions, not supported by affidavit evidence.
- [15] An appeal from this decision was dismissed by this Court on jurisdictional grounds in a judgment indexed at 2017 BCCA 344.

- [16] On this appeal as well, there is no evidence to support the argument of unconscionability. I am unable to discern any basis for interfering with the assessment of Blok J. that to continue this litigation would be an abuse of process. I would not interfere with this order.
- [8] The Court of Appeal also dismissed the appeal of the vexatious litigant order prohibiting the plaintiff from advancing or commencing further legal proceedings against Dr. Muir, without leave. The court stated:
- [21] While the discretion to make a vexatious litigant order is subject to review, I can see no basis to interfere with the exercise of discretion by Justice Blok. Ms. Jacques has commenced four separate proceedings against Dr. Muir for essentially the same claim. These proceedings have taken up significant judicial resources and imposed costs on Dr. Muir that will not in practical terms be recoverable. Three of those proceedings were commenced after the first claim was settled, after Ms. Jacques received financial compensation, and after she executed a broadly worded release in favour of Dr. Muir. In this appeal, Ms. Jacques made sweeping allegations of criminal conduct without a scintilla of evidence. There is ample support for the vexatious litigant order made by Justice Blok in this case.
- [9] On May 13, 2019, the plaintiff filed the first of the 15 requisitions she has filed with this Court. Essentially, she sought once again to relitigate her claims against the defendant, asserting again her claims of medical negligence, and challenging the settlement. The requisition was rejected by Justice Schultes.
- [10] The subsequent requisitions have all sought leave to advance the same claims. All have been refused, by at least nine other judges of this Court.
- [11] One such requisition was rejected by Justice Harvey on July 12, 2019. The plaintiff appealed the dismissal of that application to the Court of Appeal. As far as I have been able to determine, the appeal remains active, technically, but no final decision has been rendered on the merits of the appeal.
- [12] However, the respondent Dr. Muir applied to the Court of Appeal for security for costs of the appeal. Due to delay in applying, Justice Groberman declined to order the payment of security for costs, but in reasons for judgment, indexed at 2019 BCCA 456, he stated:
- [2] The appellant is a vexatious litigant. Her claim has been dismissed, but she has made numerous attempts to re-litigate it. This Court heard an appeal in respect of the matter in 2018, dismissing the appeal and affirming a vexatious litigant order in reasons indexed as 2018 BCCA 174.
- [3] Ms. Jacques has persisted, filing numerous further documents in attempts to get the matter back in front of the trial court. She seems to have an irrational belief that if only she files the right document, the court will re-open her matter. Such efforts are futile. The matter has been fully litigated, and Ms. Jacques has exhausted all possibilities to have it reheard. I can put it no more bluntly than this: the matter is over. Ms. Jacques cannot pursue it any further.

- [14] The latest misguided attempt by Ms. Jacques was to file a requisition with the Supreme Court to file a notice of application for trial, despite the fact that the claim had already been dismissed. A judge rejected the requisition and Ms. Jacques filed a notice of appeal.
- [13] Regrettably, both for her sake and from the point of view of the court and of the public, Ms. Jacques seems incapable of understanding that, as Groberman J.A. stated, her efforts are futile, and the matter is over.
- [14] No matter how many times similar requisitions may have been refused in the past, or how futile the process, when the plaintiff files a requisition seeking leave to commence proceedings or file documents, the registry personnel are obliged to bring the matter to a judge for decision. When the latest requisition was presented to me, I had no information about the history of the matter. Obtaining and reviewing that history has absorbed many hours that should have been allocated to other matters before the court.

Decision

- [15] The court is functus officio with respect to the subject matter of these proceedings. This means that the litigation between the plaintiff and the defendant ended with the order made by Blok J. on November 24, 2017, and the court has no jurisdiction to re-litigate the matter: *ICBC v. Dick*, 2020 BCCA 199 [Dick], at para. 18. As noted by Groberman J.A., the plaintiff's persistent efforts to re-litigate the matter are misguided. Every requisition that she files to that end is doomed to fail. Her efforts to set aside the vexatious litigant order are equally pointless, and only serve to further justify the order. The repetition of the same or substantially similar applications are clearly an abuse of the court's process.
- [16] As the result, I reject the latest requisition.
- [17] In addition, it is clear to me that an order is required to prevent the continued abuse of the court's process, and the waste of judicial resources this entails.
- [18] The reasoning of the Court of Appeal in *Houweling Nurseries Ltd. v. Houweling*, 2010 BCCA 315, is applicable:
- [43] Notwithstanding that judges of this Court have repeatedly held that Mr. Houweling's applications are unmeritorious, he continues to bring them. Judicial resources are not infinite. Not only do Mr. Houweling's applications take up the time of judges and court staff, they take up court-time that could be used to hear other matters. While Mr. Houweling is entitled to his "day in court", he is not entitled to come back day after day in the futile pursuit of remedies to which he is not entitled. The path he seems determined to follow adversely affects the ability of others to have their cases heard in a timely way.
- [19] In *Dick*, (para. 19) the Court of Appeal recently confirmed that this Court has the power to issue an order similar to that made by the Court of Appeal in the *Houweling* case, prohibiting the filing of further documents with the court, and authorizing registry staff to discard any document that is attempted to be filed in contravention of the order. The order

may be issued on the court's own motion. As no other party has been or will be involved in responding to the plaintiff's requisitions, it is apparent that the court must issue the order on its own motion.

[20] Accordingly, I make the following orders:

1. The plaintiff's application set out in the requisition the plaintiff filed with this Court August 17, 2020, is dismissed;
2. Chang Jacques, or anyone acting on her behalf, is prohibited from filing any document in the registry of this Court that is in any way connected with the subject matter of this proceeding;
3. The Court Registry staff is authorized to discard any document that is attempted to be filed in contravention of this order.

"Verhoeven J."

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