
CANADA / JUDGMENT

Jacques v. Rona Inc.

2019 BCSC 2459

COURT

Supreme Court of British Columbia

DECIDED

15 January 2019

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2019 BCSC 2459 Jacques v. Rona Inc.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Jacques v. Rona Inc.,

2019 BCSC 2459

Date: 20190115

Docket: S207804

Registry: New Westminster

Between:

Chang Jacques

Petitioner

And

Rona Inc.

Respondent

Before: The Honourable Madam Justice Warren

Oral Reasons for Judgment

In Chambers

Appearing on her own behalf:

Chang Jacques

Counsel for the Respondent:

Erica J.F. Grant

Place and Date of Hearing:

New Westminster, B.C.

January 15, 2019

Place and Date of Judgment:

New Westminster, B.C.

January 15, 2019

- [1] THE COURT: Rona Inc. applies for an order striking the Petition pursuant to Rule 9-5 of the Supreme Court Civil Rules, B.C. Reg. 168/2009, and an order that the petitioner, Ms. Jacques, be declared a vexatious litigant pursuant to s. 18 of the Supreme Court Act, R.S.B.C. 1996, c. 443. Rona also seeks special costs in the lump sum amount of \$2,000 or, in the alternative, an amount determined by the court. Finally, Rona seeks an order that Ms. Jacques' signature on the form of order be dispensed with.
- [2] Ms. Jacques was a customer of Rona. In August of 2015, she and Rona entered into an agreement for Rona to provide some landscaping materials and services with respect to a project on Ms. Jacques' property. There were two quotes: one for labour and one for materials. The labour and materials were each identified as a "special order". A one-year warranty applied to the labour and the agreement provided that "all special order products are not returnable".
- [3] Rona says it completed the project in August 2015. On or about September 2, 2015, Ms. Jacques asked if she could return unused materials valued at \$155.48. Rona agreed to the refund, even though this was a special order and, as such, the materials were not returnable. In the result, the total cost to Ms. Jacques for the project was \$3,548.41. That amount was paid by her to Rona.
- [4] About a year later, in the summer of 2016, Ms. Jacques advised Rona she was not satisfied with the project. Rona's representatives attended at her property and, even though the warranty had expired, they agreed to do some additional work without additional cost. Following the completion of the additional work, Ms. Jacques was still not satisfied. She contacted Rona again and alleged that the work done was not satisfactory. Rona's representatives again attended at her property. They reviewed the project and concluded, at least from their perspective, that the work had been completed satisfactorily.
- [5] A few months later, in about the spring of 2017, Ms. Jacques again contacted Rona and complained about the project. In June 2017, Rona's representatives went to her property again and again concluded that the project had been appropriately completed. Ms. Jacques clearly did not agree. She was dissatisfied with the work.

- [6] On July 4, 2017, Ms. Jacques commenced a proceeding before the Civil Resolution Tribunal ("CRT"), seeking a return of the full amount paid to Rona. She made various allegations of bad faith and conspiracy against Rona in the CRT proceeding.
- [7] On or about January 18, 2018, the parties received correspondence from the CRT that included a table setting out Ms. Jacques' claims and her requested remedies. In that table there is a column headed "Applicant's requested remedy" and in that column it states, "CRT order Rona to reimburse applicant \$3,824 for incomplete work as per the service contract." Unfortunately, Ms. Jacques seems to have misunderstood this to be an order requiring Rona to reimburse her. It is clear to me that this was not an order. It is simply a summary of Ms. Jacques' claim; that is, the relief she was seeking in the CRT proceeding.
- [8] The table was ultimately amended and incorporated into a January 25, 2018, CRT decision plan, but, again, that document simply summarized the nature of Ms. Jacques' claim. It did not reflect a decision having been made.
- [9] The CRT decision was not issued until May 2, 2018, when the CRT dismissed Ms. Jacques' claims.
- [10] On or about May 14, 2018, Ms. Jacques, unhappy with the dismissal of her claims, filed a document in Provincial Court, which had the effect of initiating an appeal of the CRT decision in the Small Claims Division of that Court. On or about September 7, 2018, a settlement conference was held in the Provincial Court proceeding. During the course of the settlement conference, the parties reached an agreement, pursuant to which Rona would pay Ms. Jacques \$1,500 in full and final settlement of her claims. It is not disputed that Ms. Jacques agreed to the settlement at the time. However, she later had second thoughts about it.
- [11] On or about September 10, 2018, Ms. Jacques filed an application in the Provincial Court to have the settlement agreement set aside on the basis that it was unfair and the quantum was too low. I am going to refer to this as the "first application".
- [12] The first application was heard and dismissed by the Provincial Court on October 1, 2018. A few days later, Rona sent a cheque to Ms. Jacques in the settlement amount of \$1,500. That cheque was cashed by Ms. Jacques.
- [13] On or about October 11, 2018, Ms. Jacques filed another application in the Provincial Court seeking "the rest of the remedy" and seeking criminal charges against Rona for "obstructing justice and perjury". I will refer to this as the "second application". The second application was heard and dismissed by the Provincial Court on October 29, 2018.
- [14] Two days later, on October 31, 2018, Ms. Jacques filed the present Petition. It names Rona as respondent. Part 1 of the Petition, the section that is intended to have a list of the orders sought, reads:
1. Seeking Order to criminal charge defendants for obstruction of justice and Perjury.

2. Claim the rest of the remedy.

Thus, the Petition seeks the same relief that was sought by Ms. Jacques in the second application in Provincial Court.

[15] The factual basis for the relief sought is set out very briefly in the Petition. It refers to the fact that there was the CRT proceeding and then the Provincial Court proceeding. It contains allegations that during the course of those proceedings Rona made false statements.

[16] The "Legal basis" section of the Petition reads:

1. BC Supreme Court rules 16-1(2)
2. Obstructing of Justice 139(1): Every one who wilfully attempts in any manner to obstruct Pervert or defeat the course of justice in judicial proceeding.

Idem (2): Every one who wilfully attempts in any manner other than a manner described in Subject (1) to obstruct, pervert or defeat the course of justice is guilty of an indictable Offence and liable to imprisonment for a term not exceeding ten years.

3. Perjury 131(1): Every one commits perjury who with intent to mislead, make before a person who is authorized by law to permit it to be made before him a false statement under oath or solemn affirmation, by affidavit, solemn declaration or deposition or orally, knowing the statement is false.

Punishment 132: Every one who commits perjury is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

4. Business Practice Regulation of BC: Unfair Practice - Deceptive Act or Practice: 4(1)(a), (2), (3) (b)(iv), 5(1)(2), 8(1), 9(1)(2).

[17] The actual legislation that the petitioner relies on is not properly identified. Paragraphs 2 and 3 appear to refer to the Criminal Code, R.S.C. 1985, c. C-46.

[18] The first item of relief sought by Rona on the present application is an order that the Petition be struck pursuant to Rule 9-5(1). Rona relies on subparagraphs (a), (b), and (d) specifically. Those portions of the rule read:

- (1) At any stage of a proceeding, the court may order to be struck out or amended the whole or any part of a pleading, petition or other document on the ground that
 - (a) it discloses no reasonable claim or defence, as the case may be,
 - (b) it is unnecessary, scandalous, frivolous or vexatious,
 - ...
 - (d) it is otherwise an abuse of the process of the court ...

- [19] The test for striking a pleading on the ground that it discloses no reasonable claim has been articulated by the Supreme Court of Canada in *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42. A claim will only be struck if it is plain and obvious, assuming the facts pleaded to be true, that the pleading discloses no reasonable cause of action. In *E.B. v. Director of Child, Family and Community Services*, 2016 BCCA 66, the Court of Appeal observed that the test must be modified when the application to strike is brought in a petition proceeding. A petition need not disclose a cause of action, but it must set out a foundation for a type of proceeding authorized to be brought by petition.
- [20] It is my conclusion that the Petition does not disclose a foundation for any type of claim that may be brought by petition. The claim for "the rest of the remedy" appears to be a claim for damages for breach of contract or for the return of the balance of the amount Ms. Jacques paid to Rona in relation to the project. The other relief appears to seek criminal charges against Rona. Neither of these forms of relief are available by petition. For that reason, the Petition is struck under Rule 9-5(1)(a).
- [21] As I noted, there is some reference in the legal basis section to something called the Business Practices Regulation. None of the relief sought appears to be linked to that Regulation. In any event, a claim brought under some consumer protection legislation based on deceptive business practices, would likely have to be brought by notice of civil claim, not by petition.
- [22] Although it is not necessary to address the alternative bases for striking the Petition, I will do so because of the claim for special costs.
- [23] Rona says the petition is unnecessary, scandalous, frivolous, or vexatious and should be struck under Rule 9-5(1)(b). A scandalous pleading is one that is so irrelevant that it would involve the parties in useless expense and prejudice the trial of an action by involving them in a dispute apart from the issues. A pleading is unnecessary or vexatious if it does not go to establishing a plaintiff's cause of action or does not advance any claim known in law. A pleading is frivolous if it is obviously unsustainable.
- [24] I have no difficulty concluding the Petition is scandalous. It appears to assert allegations of criminal conduct on the part of Rona, which are, as far as I can tell, irrelevant to the underlying claim for damages or return of the amount paid for the project. These very serious allegations have resulted in expense to Rona in the form of legal fees incurred to counter them. The Petition is also unnecessary and vexatious because it does not establish any cause of action or claim that may be advanced by petition. In fact, it does not properly advance any claim known in law. Further, it is frivolous. The same relief was sought, with some variation, in the CRT proceeding, and the very same relief was sought Provincial Court proceeding, and both those proceedings were dismissed. For these reasons, the Petition is struck under Rule 9-5(1)(b).

[25] Finally, Rona says the Petition should be struck as an abuse of process. Rona says the doctrine of *res judicata* applies. In *Danyluk v. Ainsworth Technologies*, 2001 SCC 44, the Supreme Court of Canada explained that *res judicata*, in the context of issue estoppel, requires the applicant to establish that the same question has been decided, that the judicial decision, which is said to create the estoppel was final, and that the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised.

[26] Here, the parties are the same persons as the parties in the Provincial Court proceeding and the CRT proceeding. The settlement agreement reached in the Provincial Court and the subsequent orders issued are final. The questions apparently underlying this Petition were resolved in the Provincial Court proceeding and then re-litigated there in the first application and the second application. In plain language, the matter has already been determined. In that sense, the Petition is an abuse of process and it is struck under Rule 9-5(1)(d).

[27] The next question is whether an order should be made declaring the petitioner to be a vexatious litigant. Section 18 of the Supreme Court Act provides:

18 If, on application by any person, the court is satisfied that a person has habitually, persistently and without reasonable grounds, instituted vexatious legal proceedings in the Supreme Court or in the Provincial Court against the same or different persons, the court may, after hearing that person or giving him or her an opportunity to be heard, order that a legal proceeding must not, without leave of the court, be instituted by that person in any court.

[28] This Court has previously identified characteristics of a typical vexatious proceeding, which include:

- bringing one or more actions to decide an issue that has already been determined;
- where it is obvious that an action cannot succeed or the action would lead to no possible good, or if no reasonable person could reasonably expect to obtain relief;
- actions that are brought for an improper purpose; and
- grounds and issues tend to be rolled forward into subsequent actions, and repeated and supplemented.

In determining whether proceedings are vexatious, the court is to look at the whole history of the matter.

[29] In this matter, the petitioner filed multiple applications in the Provincial Court proceeding, despite the final settlement agreement having been reached. Of course, she is not to be faulted for bringing the CRT proceeding or appealing that proceeding, given she was not satisfied with the result. But, after that, a settlement agreement was reached. She challenged that agreement in Provincial Court twice. She failed both times. Then she commenced this proceeding. For the reasons already expressed, it is obvious that this Petition cannot

succeed.

[30] The grounds and issues raised have been rolled over from the Provincial Court and repeated in the Petition. In particular, the claim that the settlement agreement is unfair was made in the first application in Provincial Court, the second application in the Provincial Court, and in this Petition. The allegations of criminal conduct were rolled forward from the unsuccessful second application in Provincial Court into this Petition.

[31] In my view, the petitioner's conduct after the settlement agreement was reached, in particular the filing of the first application and the second application, followed by this Petition, particularly given the very serious allegations she has advanced against the defendant, justify an order under s. 18 of the Supreme Court Act.

[32] Among other things, the petitioner said:

- Rona's representatives laid a trap for her;
- there is a need to protect other people from Rona's deceptive practices;
- Rona used her money to pay for someone else's project;
- it was a scam;
- there was an intentional violation of business practices and an intentional obstruction of justice; and
- that Rona's representatives lied and committed perjury.

These are extremely serious allegations that have been advanced in a manifestly deficient manner. That reality, layered on top of the other factors mentioned, satisfies me that a vexatious litigant order is warranted.

[33] There will be an order that Ms. Jacques must not, without leave of the court, commence any proceeding against Rona Inc. Ms. Jacques, I am declaring you a vexatious litigant. This means you cannot file any more proceedings against Rona without first getting leave of the court. If you wish to advance another claim, I would urge you to get some legal advice and make sure it is drafted properly before you apply for leave to file it.

[34] The final question is Rona's claim for special costs.

[35] Special costs are awarded where a party has engaged in reprehensible conduct. Some examples of circumstances that meet that threshold are pursuing a meritless claim and being reckless with regard to the truth; making improper allegations of fraud, conspiracy, fraudulent misrepresentation, or breach of fiduciary duty; displaying reckless indifference by not recognizing early on that a claim is manifestly deficient; and presenting a case so weak that it is bound to fail: *Mayer v. Osborne Contracting Ltd.*, 2011 BCSC 914.

- [36] Here, the petitioner has advanced an unnecessary, scandalous, frivolous, and vexatious Petition containing serious allegations of criminal conduct without coming close to disclosing a reasonable claim. The claim as pleaded is manifestly deficient and includes very serious allegations of dishonesty. Although Ms. Jacques is a self-represented litigant, that does not excuse her conduct or allow her to proceed with impunity. I am satisfied that it is appropriate to characterize her conduct as reprehensible, as that term is used in the context of an award of special costs.
- [37] For these reasons, Rona is awarded special costs. I am satisfied that it is appropriate to quantify those costs now at \$2,000. I see no point in putting anybody to any further expense. I am satisfied by the representations made to me by Ms. Grant that \$2,000 is less than the actual time spent at the actual hourly rates for Rona's counsel. On the regular tariff, I am told the costs would be about \$1,500. In the circumstances, I am satisfied that if special costs were assessed, they would exceed \$2,000.
- [38] In summary, the claim is struck on the basis of each of subparagraphs (a), (b), and (d) of Rule 9-5(1). Ms. Jacques is declared a vexatious litigant. She may not commence proceedings against Rona Inc. without leave of the court. Rona shall have special costs in the amount of \$2,000.
- [39] Is there anything arising, Ms. Grant?
- [40] MS. GRANT: Sorry, My Lady, just if I may, will there be an order that the petitioner's signature on the form of the order --
- [41] THE COURT: Yes.
- [42] MS. GRANT: -- be dispensed with?
- [43] THE COURT: Yes.
- [44] MS. GRANT: Thank you.
- [45] CHANG JACQUES: I just want to make clear, I'm not allowed to -- am I allowed to bring the -- so if I file -- I find a lawyer to represent me, is that means the case allowed to bring back to the court or never allowed to bring back to the court?
- [46] THE COURT: You cannot commence any proceeding against Rona without getting an order of the court. You will need to present any draft claim to a judge on an application and the judge will approve it if he or she thinks it is appropriate. If you think you have some proper claim to advance, I strongly suggest you get some legal assistance in drawing it up.

"WARREN J."

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Prepared on 30 October 2026 · Esheria