
CANADA / JUDGMENT

Kalcsa v. Read Media Inc.

2016 BCSC 248

COURT

Supreme Court of British Columbia

DECIDED

6 January 2016

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2016 BCSC 248 Kalcsa v. Read Media Inc.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Kalcsa v. Read Media Inc.,

2016 BCSC 248

Date: 20160106

Docket: 14-3489

Registry: Victoria

Between:

Laura Kalcsa

Plaintiff

And

Read Media Inc. and Robert Read

Defendants

And

Laura Kalcsa

Defendant by way

of Counterclaim

Before: The Honourable Mr. Justice G. R. J. Gaul

Oral Reasons for Judgment

In Chambers

Appearing on her own behalf:

L. Kalcsa

Counsel for the Defendants:

W. Pedersen

Place and Date of Trial/Hearing:

Victoria, B.C.

January 6, 2016

Place and Date of Judgment:

Victoria, B.C.

January 6, 2016

- [1] THE COURT: On 13 July 2015, the plaintiff, Laura Kalcsa, filed an application for an order striking the defendants' amended response and counterclaim, and pronouncing judgment in her favour pursuant to Rule 22-7(2)(d) of the Rules of Court. The personal defendant, Robert Read, is the director and sole shareholder of the corporate defendant, Read Media Inc.
- [2] Ms. Kalcsa's application came on for hearing on 25 August 2015. The defendants were not present, although they had been duly served. Given the nature of the relief being sought and out of an abundance of caution, Mr. Justice Punnett adjourned the application to 17 September 2015 and directed Ms. Kalcsa to serve the defendants again by delivering her materials to a specific and identified address in North Vancouver.
- [3] On 17 September, Ms. Kalcsa's application came on for hearing before Mr. Justice Macintosh. Once again, the defendants were not present, although they had been served in compliance with Mr. Justice Punnett's order.
- [4] Pursuant to Rule 22-1(2), the court may hear and decide an application, notwithstanding the fact that one of the parties is absent. The rule reads as follows:

Failure of party to attend

- (2) If a party to a chambers proceeding fails to attend at the hearing of the chambers proceeding, the court may proceed if, considering the nature of the chambers proceeding, it considers it will further the object of these Supreme Court Civil Rules to do so, and may require evidence of service it considers appropriate.
- [5] If the court is satisfied that a party has failed to comply with the Rules of Court, then pursuant to Rule 22-7(2)(d), the court may:

- (d) dismiss the proceeding or strike out the response to civil claim and pronounce judgment.
- [6] After hearing from Ms. Kalcsa and reviewing the filed materials, Mr. Justice Macintosh granted the application. In doing so he made the following order:
1. The Claimant, Laura Kalcsa will obtain judgment against the Defendants, Read Media Inc. and Robert Read to include the following relief:
 - a) The promissory note is no longer enforceable on any terms;
 - b) The Claimant, Laura Kalcsa has judgment for the \$50,000 that she has paid.
 2. The Order of the Honourable Justice Mackenzie made on August 28, 2015, is hereby extended 3 months from today's date to December 17, 2015;
 3. If judgment in the sum of \$50,000 against the Defendants, Read Media Inc. and Robert Read is not paid on or before December 17, 2015, the Claimant, Laura Kalcsa is entitled to satisfy her judgment by obtaining the rights as against Read Media Inc. and Robert Read to the website and the client's lists and the Registry trademarks of Read Media Inc. and Robert Read;
 4. The Claimant, Laura Kalcsa is awarded costs up to and including this application;
 5. Registry is to draft the Order.
- [7] Today, in an application filed 18 December 2015, the defendants seek to have the order of Mr. Justice Macintosh reconsidered and set aside pursuant to Rule 22-1(3), which reads:

Reconsideration of order

- (3) If the court makes an order in circumstances referred to in subrule (2), the order must not be reconsidered unless the court is satisfied that the person failing to attend was not guilty of wilful delay or default.

Did the defendants fail to attend court because of wilful delay or default?

- [8] Examining the defendants' history in this litigation sheds light on the principal question to be addressed on this application. Ms. Kalcsa says Mr. Read has shown a brazen disregard for the Rules of Court and has, as a litigation tactic, refused or neglected to participate in the process. On the evidence before me, I find Ms. Kalcsa is right.
- [9] Mr. Read's first disregard of the Rules was his failure to attend the 17 March 2015 case planning conference. In his affidavit sworn 14 December 2015, Mr. Read explains his absence from the conference:

- [8] On or about March 17, 2015, a case planning conference was held in this matter. I travelled to Victoria to attend the case planning conference, but while eating lunch, a crown dislodged from my tooth, causing me excruciating pain. I went immediately to the Oak Bay Dental Centre in Victoria. I called the court to make them aware of this emergency and that I could not attend. I have since become aware that the Case Planning Conference was made (sic) in my absence and that orders were made requiring me to file a List of Documents.
- [10] In her responsive affidavit sworn 24 December 2015, Ms. Kalcsa explains that at the case planning conference, Master McCallum informed her that someone claiming to be Mr. Read had contacted the court registry prior to the conference and had indicated that he was in a hospital in Quebec and could not attend the conference.
- [11] In his reply affidavit sworn 28 December 2015, Mr. Read changes his earlier evidence and confirms Ms. Kalcsa's version of what happened on 17 March 2015. He explains:
- [3] I have reviewed paragraphs eight to sixteen of Ms. Kalcsa's affidavit which pertain to the case planning conference and the order made after the case planning conference. Having reviewed these materials, I agree with Ms. Kalcsa that the reason I did not attend the case planning conference was because I had checked myself into a treatment facility in Quebec to deal with my mental health and substance abuse issues. I was at the facility from March 6th to April 5th, 2015. The dental emergency described in my first affidavit prevented me from attending the Examination for Discovery on May 29, 2015.
- [12] Mr. Read claims he was prevented from addressing the litigation and from participating at the case planning conference because he was out of the province undergoing treatment. I reject that assertion. While it is unclear to me exactly where Mr. Read was and what exactly he was doing, it is clear he had access to and use of a telephone. In my view there was no reason he could not have participated at the case planning conference by that means. Moreover, there is evidence that Mr. Read had access to and used email when he was out of British Columbia. For example, in an email dated 5 April 2015 to Ms. Kalcsa, Mr. Read provided her with a street address and map indicating where he was in Quebec. The email read:

Just so you believe me here's where I am now. Next week I'm in Toronto the following week EDMONTON and the week after that Calgary. Phew! :) R

- [13] According to Ms. Kalcsa's evidence, the address Mr. Read gave her, 262 Rue Saint Jacques, is the address of a hotel in Montreal and not a substance abuse treatment centre.
- [14] Mr. Read was aware that a case planning conference date was scheduled for 17 March 2015. Aside from his bald assertion that he was in some unnamed treatment facility in Quebec for mental health and substance abuse issues, there is no other evidence that explains where he was, why he was there, or what he was doing there. Nor does he explain why he could not have participated at the case planning conference by telephone or had an agent appear on his behalf. Moreover, Mr. Read made no attempts in the days following the case planning

conference to determine what had resulted from the conference. In my opinion, if he was genuinely interested and wanted to defend against the claims in Ms. Kalcsa's action, he would have at least tried to find out what happened in his absence.

- [15] Mr. Read was fully aware of his need to attend court on 17 March 2015 and I am not convinced in the least that he had any desire or intention of participating at the conference. In my opinion, he simply chose to ignore and avoid this step in the litigation.
- [16] Mr. Read also failed to attend his examination for discovery that was scheduled for 2:00 pm on 29 May 2015. This examination formed part of the litigation steps what were set out in the case planning conference order. That order was sent to Mr. Read on or around 28 March 2015 and I have no doubt he received it shortly thereafter. Although he knew he had to attend for the examination, he failed to do so. In her affidavit, Ms. Kalcsa explained what happened:
- [18] after attempting all forms of service on Robert Read for the Examination for Discovery scheduled for May 29, 2015, I arrived at PVR Court Reporting on that date - only to be greeted with the news that Robert Read had just called and stated he would not be appearing. His reason was 'he had lost a crown and was Oak Bay Dental Centre'.
- [17] While Ms. Kalsca was waiting at the court reporter's office, she contacted the Oak Bay Dental Centre only to discover that it was closed that day.
- [18] In his first affidavit, Mr. Read did not mention his failure to attend his examination for discovery. He did however attribute his failure to attend the March 2015 case planning conference on a dental emergency. In his second affidavit, Mr. Read explained that he was in Victoria on 29 May 2015 and intended to attend the examination for discovery but he could not because of a dental emergency.
- [19] The evidence concerning the "dental emergency" is skimpy and unconvincing. Mr. Read says the emergency arose over the lunch hour. The examination for discovery was to start at two o'clock. He has provided no evidence regarding how long he was at the dentist's, nor does he say anything about the treatment he received. Tellingly, he has presented no evidence from the Oak Bay Dental Centre that corroborates his story. The only evidence he has offered is a portion of a MasterCard credit card statement that indicates a \$69.20 charge by the Oak Bay Dental Centre being posted to his account on 30 May 2015.
- [20] I am not persuaded that Mr. Read was incapacitated on the 29th and could not attend his examination for discovery. He was aware of the examination date and he knew where it was scheduled to take place. Even if Mr. Read did require emergency dental treatment because of a broken or lost crown, he fails to provide any evidence why he could not have attended the examination after his meeting with the dentist. Beyond contacting the official court reporter to tell her of his dental situation, Mr. Read did nothing with respect to his examination for discovery. I underscore the fact that there is nothing from Oak Bay Dental Centre or the dentist who treated Mr. Read explaining the nature of the treatment he

received, how long the treatment took or what Mr. Read's condition was immediately after the treatment. That is, there is no evidence that supports Mr. Read's assertion that he was physically incapable of attending his examination. Contrary to what one would have expected from someone who had failed to attend an appointment, Mr. Read did not contact Ms. Kalcsa or even try to contact her to reschedule the appointment. Much like what happened after his non-appearance at the case planning conference, Mr. Read did nothing to follow-up on his failure to attend the examination for discovery and simply carried on with his own business as if nothing had occurred. In my respectful opinion, this is another example of Mr. Read's conscious decision to ignore Ms. Kalcsa's legitimate attempts to prosecute her claims against him and the corporate defendant.

- [21] This brings us to Mr. Read's failure to attend at the 17 September 2015 hearing before Mr. Justice Macintosh. The key question is: is Mr. Read guilty of wilful delay or default in failing to attend at that hearing?
- [22] In *Anderson v. Toronto-Dominion Bank*, 70 B.C.L.R. 267 (C.A.), Hutcheson J.A. considered the predecessor to Rule 22-1(3) and explained the meaning of the phrase "guilty of wilful delay or default" as follows at page 270:

This Court held in *Northguard Mortgage Corporation v. Hamada* (1985), 65 B.C.L.R. 60 (C.A.) that the decision of Satoshi Hamada to turn over the petition of foreclosure to his brother because the petition did not relate to him was "purposeful, deliberate or intentional": the decision amounted to wilful default.

With respect, that definition of wilful default does not give proper effect to the phrase "guilty of wilful delay or default". I think that the proper effect is stated in the note to this definition of "wilful" in the *Shorter Oxford English Dictionary*:

4. Done on purpose or wittingly; purposed, deliberate, intentional. (Chiefly, now always, in bad sense of a blameworthy action: freq. implying perverse, obstinate.)

I note that the words used in *Hamada* -- purposeful, deliberate or intentional -- are very close to the definition I have quoted. What is lacking is the note on usage -- now always, in bad sense of a blameworthy action. In my opinion the phrase "guilty of wilful delay or default" carries with it the sense of a blameworthy action. The word "guilty" likewise emphasizes that the person who delayed or defaulted or both must be one deserving of blame and of the consequent penalty of not being heard on the merits of the application. Among other things, if satisfactory explanations are given for the delay and the default, then it is open to the Court to reconsider whether there is any merit in the defence. The failure may have been "purposeful, deliberate or intentional" but, depending on the circumstance, it may not be blameworthy.

- [23] Ms. Kalcsa says she personally served Mr. Read with her application materials, as she was told to do by Mr. Justice Punnett. I accept her evidence on this and find she did everything that was required of her and more. Mr. Read says he recalls Ms. Kalcsa attending at his office, but he does not remember receiving any documents from her. His evidence on this

point is inconsistent and contradictory and not convincing in the least. At first Mr. Read said he did not know of the 17 September hearing date. However, after reading Ms. Kalcsa's affidavit, he corrects himself and remembers that because of another serious medical condition that required him to attend the hospital, he was unable to travel to Victoria on the 17th to participate at the hearing. As for what he did in advance of the hearing, Mr. Read acknowledges that he called the court registry sometime in September to explain that he could not attend the hearing. The medical records Mr. Read has provided to explain his failure to attend the hearing are unconvincing and do not corroborate his story. I accept that he was receiving medical treatment around the date of the hearing; however there is nothing to suggest that he could not have attended the hearing or at least participated by telephone from the Lower Mainland. Nor is there any convincing evidence to explain why he could not have had an agent appear in his stead. In my opinion, Mr. Read's behaviour regarding the 17 September hearing, including his failure to find out afterwards what had transpired, is another example of his pattern of wilfully avoiding this litigation.

- [24] In summary, I have no doubt Mr. Read was served with the application materials. I also have no doubt that he knew what was going to happen on 17 September. In my opinion he could have attended the hearing, but chose not to in the hope that the hearing would not proceed.

Conclusion

- [25] The law is clear that striking pleadings and granting judgment pursuant to Rule 22-7(2)(d) because of a failure to comply with the Rules of Court is a draconian measure. It is a blunt tool to be used sparingly and in only the most egregious of cases because it deprives the litigants of a trial on the evidence (see: *Homer Estate v. Eurocopter S.A.*, 2003 BCCA 229; *House of Sga'nisim v. Canada (Attorney General)*, 2007 BCCA 483).
- [26] Rule 22-1(3) permits the court to reconsider such a decision when it is made in the absence of a party only "if it is satisfied that the person failing to attend was not guilty of wilful delay or default".
- [27] In my opinion, Mr. Read's failure to attend the case planning conference, the examination for discovery and the hearing before Mr. Justice Macintosh was wilful and purposeful. It was deliberate and intentional. More importantly, it was inexcusable and blameworthy. In my view Mr. Read has bobbed and weaved using unsubstantiated stories of medical conditions and emergencies to avoid addressing the claims Ms. Kalcsa has made against him and his company.
- [28] Mr. Read's evidence on this application is unconvincing. While I am prepared to accept that 2015 was, at times, a stressful year for him, that does not explain or justify how he has mistreated Ms. Kalcsa and her genuine and appropriate attempts to prosecute her claims against him and his company. Even if I accepted Mr. Read's version of events, it does not satisfactorily explain or justify his blatant failure to participate at the various hearings.

- [29] In my opinion, there is ample evidence to find Mr. Read guilty of wilful delay and default when he failed to attend the hearing on 17 September 2015. The same applies for his failures to attend the case planning conference and the examination for discovery.
- [30] I find the case cited by Ms. Kalcsa, *Doyle v. Lunny Design and Production Group*, 2009 BCSC 925, is strikingly similar to the case before me. In refusing to set aside a default judgment that had been taken against the defendant, Mr. Justice Smith concluded:
- [27] In this case, even if I were to accept all of Ms. Lunny's evidence, it shows nothing more than that she, with full knowledge of the action and of the fact documents relevant to it were being delivered to her home, simply chose to ignore the matter. The fact that that she delegated responsibility to her husband, who turned out to be unreliable, should not be any concern of the plaintiff, who delivered documents as required.
- [28] Ms. Lunny was deliberately and inexcusably inattentive, if not willfully blind, to the legal process that she knew had been started against her company. That conduct must be considered blameworthy and it would be unfair to the plaintiff, who did everything the Rules of Court require, to set aside the judgment now.
- [31] The description of Ms. Lunny's conduct could easily be used to describe how Mr. Read has approached Ms. Kalcsa's action.
- [32] For all of the foregoing reasons, I find there are no justifiable grounds to reconsider Mr. Justice Macintosh's decision. In the result, the defendants' application is denied.
- [33] My interim order of 18 December 2015 is vacated. Effective immediately, the defendants and each of them are prohibited from using in any way any trademarks, websites, client lists, or assets of Read Media Inc. This includes Mr. Read holding himself out as a representative of Read Media Inc.
- [34] The defendants are also prohibited from selling or encumbering any assets lawfully belonging to Read Media Inc. or in which Read Media Inc. has an interest.
- [35] Ms. Kalcsa has been successful on this application and therefore she is entitled to her costs.
- [36] The parties have leave to apply for any further directions, in the event such directions are necessary. While I am not seized of this matter, I will hear any such application if I am available.
- [37] Mr. Pedersen, it was your clients' application. Do you require any clarification of the order I have made?
- [38] MR. PEDERSEN: The defendants are prohibited from using in any way the assets of Read Media or selling or encumbering the assets of Read Media, am I repeating that back correctly?

[39] THE COURT: Yes, the defendants and each of them are prohibited from using in any way the trademarks, websites, client lists, or any of the assets of Read Media Inc. This includes holding themselves out as representatives of Read Media Inc. The defendants are also prohibited from selling or encumbering any of the assets of Read Media Inc. or assets in which they have any legal interest.

[Discussion regarding the terms of the order]

[40] THE COURT: Mr. Read is prohibited from using the client lists and holding himself out as Read Media. He is prohibited from using the websites and trademarks owned by Read Media.

[41] The order of Justice Macintosh makes it clear that Ms. Kalsca is entitled to satisfy the judgment by obtaining the rights to Read Media's websites, client lists and registered trademarks.

[42] MR. PEDERSEN: Thank you, you have given the clarification that I seek, My Lord.

[Further Discussions]

[43] THE COURT: Ms. Kalcsa, your application filed 17 December 2015 for an injunction is adjourned generally. If any difficulties arise, you can reset the hearing of that application, but I think Mr. Pedersen is correct. The order that I have made today addresses all of the issues. The purpose of the additional term of my order is to freeze Read Media's assets, so that they can be transferred to you in accordance with Mr. Justice Macintosh's order.

[44] LAURA KALCSA: Thank you.

[45] THE COURT: I should add that there is nothing stopping you and Mr. Pedersen, who is presently representing Mr. Read, or you and Mr. Read from discussing another way of addressing and resolving the dispute between you, including the outstanding judgment. The only issue before me today was whether Mr. Justice Macintosh's order would be reconsidered. I have denied that application and I have given my reasons for that decision.

[46] LAURA KALCSA: Thank you, Your Lordship.

"G. R. J. Gaul J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/16/02/2016BCSC0248.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/kalcsa-v-read-media-inc-2016>

Prepared on 30 October 2026 · Esheria