

CANADA / JUDGMENT

Kim v. Kim

2019 BCSC 230

COURT

Supreme Court of British Columbia

DECIDED

22 February 2019

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2019 BCSC 230 Kim v. Kim IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Kim v. Kim, 2019 BCSC 230 Date: 20190222 Docket: S120638 Registry: New Westminster Between: Soon Young Kim doing business as Han Song Korean Restaurant Plaintiff And Daesik Kim, 0732022 B.C. Ltd., 626923 B.C. Ltd., Agnew Bailiffs and Financial Adjusters Ltd. Defendants Before: The Honourable Madam Justice Marzari Reasons for Judgment on Costs Counsel for the Plaintiff: K.J. Learn J.J. Jung Counsel for the Defendants, Daesik Kim, 0732022 B.C. Ltd., and 626923 B.C. Ltd.: L.C. Morrison Counsel for the Defendants, Agnew Bailiffs and Financial Adjusters Ltd.: No Appearance Place and Date of Trial/Hearing: Vancouver, B.C. January 18, 2019 Place and Date of Judgment: New Westminster, B.C. February 22, 2019

- [1] On January 18, 2019, I gave reasons for judgment in this matter, referenced at 2019 BCSC 222. Given that the final damages awarded of \$25,000 was within Small Claims jurisdiction, I indicated that there would be no costs to either party, subject to submissions on costs.
- [2] I have now received those submissions.
- [3] They confirm that the Small Claims jurisdiction when this claim was brought in 2009 was \$25,000 plus interest and costs. Therefore the order for pre-judgment interest does not bring the award outside of the Provincial Court jurisdiction.
- [4] The parties agree that pre-judgment interest is owed in the amount of \$2,091. In addition, the parties agree that disbursements remain recoverable in accordance with Rule 14-1(5) and 14-1(10).
- [5] The plaintiff argues that I should exercise my discretion pursuant to Rule 14-1(10) and award costs to her on the basis that "there was sufficient reason for bringing the proceeding in the Supreme Court" pursuant to that Rule. She says that there were sufficient reasons for her decision to bring her claim in this Court, including:
- a) The notice of civil claim contains claims in defamation and for declaratory relief that could not have been brought in Provincial court;
 - b) The claim was for substantially more than \$25,000, and it was reasonable for her to perceive the potential for a much higher award than what she ultimately received; and

- c) The matter was complex and both parties used the discovery process.
- [6] The landlord defendants oppose costs beyond disbursements, which they agree are available. In response to the plaintiff's arguments above, they say:
- a) The Plaintiff did not advance the claim in defamation at the summary trial, and no finding was made in that regard. It was not only an unsuccessful claim, it was not advanced or pursued at all;
- b) The same is true of the declaratory relief. The declaratory relief was for the termination of the lease and entirely unnecessary as the lease had clearly been terminated before the writ was filed;
- c) It is not sufficient that the initial claim be above the Provincial Court jurisdiction to justify or require the filing in Supreme Court. To the contrary, the onus is on counsel to properly assess the claim before commencing the action in this Court; and
- d) The discovery process was unnecessary in this case. It was not a complex case, and all of the evidence that the plaintiff required to prove her claim was in her possession and not that of the defendants.
- [7] The principles applicable to Rule 14-1(10) were set out in *Khan v. All-Can Express Ltd.*, 2014 BCSC 2066 at para 28. This case confirms that a plaintiff is not entitled to costs when damages awarded are within Provincial Court jurisdiction under the Small Claims Act, R.S.B.C. 1996, c. 430, unless the court makes a positive finding that there was sufficient reason to bring the proceeding in this Court based on proof of circumstances that are persuasive and compelling. The point in time for evaluating this determination is at the time the action was initiated. Quantum is not the only consideration, other factors may also be relevant, and the final determination is to be made on an objective basis.
- [8] In this case, the plaintiff's claim was for amounts more than ten times above the Small Claims Act limit applicable at the time. Nevertheless, I found that the plaintiff's evidence of her losses was highly exaggerated and could not substantiate a loss of more than \$10,000. The remainder of the award is a nominal amount to recognize the breach of the lease in the absence of proof of the loss as pled. Indeed, I found significant aspects of the plaintiff's evidence to be self-serving, contradictory, inadmissible and unreliable. In addition, the claim itself pled a contradictory basis for the loss from another claim, and was not pursued at all for many years.
- [9] In these circumstances, the amount claimed by the plaintiff does not provide a compelling or objective basis for the filing of this claim in the Supreme Court.
- [10] Nor do the claims in defamation or for a declaration of a breach of the lease. Neither of these claims were pursued by the plaintiff. The declaration was unnecessary and would not have foreclosed the same claim being advanced in the Provincial Court.

- [11] Finally, I agree with the defendants that the discovery process was not objectively required to advance this claim. The plaintiff did not rely on any documents produced by the defendants in this case, nor any discovery transcripts. The evidence required to advance this claim was almost entirely within the plaintiff's knowledge, relating as it did to her own business and its value.
- [12] In conclusion, I confirm my original costs decision that Rule 14-1(10) applies in this case such that there shall be no costs to the plaintiff under the tariff. The plaintiff is entitled to prejudgment interest as agreed in the amount of \$2,091 and to her disbursements to be assessed in accordance with Rule 14-1(5). "Marzari J."

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