

CANADA / JUDGMENT

Knight v. British Columbia

2020 BCSC 1338

COURT

Supreme Court of British Columbia

DECIDED

10 September 2020

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

2020 BCSC 1338 Knight v. British Columbia

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Knight v. British Columbia,

2020 BCSC 1338

Date: 20200910

Docket: S187255

Registry: Vancouver

Between:

James Stephen Knight

Plaintiff

And

Her Majesty the Queen in Right of the Province of British Columbia, Minister of Public Safety and Solicitor General of the Province of British Columbia, Sunshine Coast Campground Group Ltd., Creekside Campground and Jane Doe

Defendants

Before: The Honourable Madam Justice Iyer

Reasons for Judgment- Summary Trial Application

Counsel for Plaintiff:

P. Busch

Counsel for Defendant, Her Majesty the Queen in Right of the Province of British Columbia:

T. Callan

Counsel for Defendant, Minister of Public Safety and Solicitor General of the Province of British Columbia:

A. Scarth

Place and Date of Hearing:

Vancouver, B.C.

August 11, 2020

Place and Date of Judgment:

Vancouver, B.C.

September 10, 2020

OVERVIEW

- [1] The defendant HMTQ in Right of British Columbia ("Crown") applies under Rule 9-7 of the Supreme Court Civil Rules, B.C. Reg. 168/2009 to have the plaintiff's claim against it dismissed summarily. The crux of Mr. Knight's claims against all of the defendants is that they conspired or facilitated Mr. Knight's eviction from the site where he had resided in a modified school bus for several years. Mr. Knight contends that the Crown's prosecution of him on criminal charges enabled the other defendants to evict him.
- [2] Under Rule 9-7, the court must first determine whether the matter is suitable for disposition by summary trial in that it can achieve a fair and just adjudication of the disputed issue. If so, the court must adjudicate that issue based on the evidence before it.
- [3] Mr. Knight argues his case against the Crown is not suitable for summary determination because the application is premature and "the issues are too complex and tangled with the issues of the other defendants to be dealt with in a summary trial."
- [4] For the reasons that follow, I disagree. Mr. Knight's claim against the Crown as pleaded and as particularized, is distinct from his claims against the other defendants, none of whom are seeking dismissal of the claims against them. I am satisfied that his case against the Crown can be fairly adjudicated in a summary way. I am also satisfied on the evidence before me that Mr. Knight has not proved his case against the Crown.

BACKGROUND

- [5] In January 2017, the plaintiff, James Knight, was living in an adapted school bus on a site at a campground/trailer park near Sechelt that is owned and operated by the defendants Sunshine Coast Campground Group Ltd. and Creekside Campground, and managed by Jane Doe ("Creekside"). On January 25, 2017, members of the local RCMP detachment, represented in this action by the defendant Minister of Public Safety and Solicitor General ("Minister"), arrived at the request of Creekside to assist in evicting Mr. Knight.
- [6] There was an altercation. Mr. Knight refused to leave his home. He had a stick and waved it at the site manager and the RCMP when they entered his bus. The RCMP sprayed Mr. Knight with an aerosol gas. Mr. Knight was arrested and taken into custody for the night.
- [7] The next morning, Marion West, a crown counsel, received the Report to Crown Counsel ("RTCC") from the RCMP. The RTCC contained notes from the four officers who had been at Creekside, a video of the incident, and a photo of the stick. It also included Mr. Knight's criminal record. Based on this material,[1] Ms. West approved charging Mr. Knight with one count of carrying, using or threatening to use a weapon or imitation weapon, contrary to s. 267(a) of the Criminal Code, R.S.C. 1986, c. C-46, and one count of carrying or possessing a weapon (a stick), for a purpose dangerous to the public peace or for the purpose of committing an offence, contrary to s. 88(1) of the Code ("Charges"). In so doing, she applied the Crown Counsel charge assessment standard and determined that there was a substantial likelihood of conviction and prosecution was in the public interest.
- [8] When Mr. Knight was taken to court the next day, he was granted bail on conditions that included a prohibition on returning to Creekside, except in the presence of a third party and then only to facilitate a pre-arranged removal of his personal belongings.
- [9] The Crown elected to proceed summarily on the Charges and a two-day trial was scheduled for September 21-22, 2017. In the interim, Creekside had Mr. Knight's home and remaining belongings removed from the site and placed in storage. It informed Mr. Knight where they were and paid the storage fee for two months.
- [10] In August 2017, Ms. West began to prepare for the trial. When she interviewed the site manager, she learned that the Mr. Knight and Creekside had been involved in a lengthy and acrimonious dispute about his residence at the site, that Creekside had been trying to get him evicted for some time, and that the manager did not want to testify because she feared harassment from Mr. Knight. Ms. West decided that it was no longer in the public interest to prosecute Mr. Knight because of the manager's concern. Ms. West stayed the charge on August 23, 2017, and directed that Mr. Knight be informed of the stay through the probation office.
- [11] Unfortunately, that did not occur. Apparently, the probation office did not inform Mr. Knight so he did not learn about the stay until the first day of trial on September 21, 2017. Another crown counsel, Trevor Cockfield, had conduct of the pre-trial matters. At those appearances,

Mr. Knight represented himself, but he told Mr. Cockfield that Peter Busch would be representing him at trial. Mr. Busch and Mr. Cockfield spoke by telephone; however, there was no documentation of Mr. Busch being Mr. Knight's counsel, so no one contacted Mr. Busch.

- [12] On June 27, 2018, Mr. Knight filed a notice of civil claim ("Claim") against the defendants advancing 18 claims:
1. The Defendants, MPSSGBC [Minister of Public Safety and Solicitor General of the Province of British Columbia], and the ATTORNEY GENERAL AND MINISTRY OF JUSTICE, maliciously prosecuted against the Plaintiff the charges of mischief and assault with a weapon and possession of a weapon for unlawful purposes to affect the eviction from the Creekside Campground.
 2. The Defendants, MPSSGBC, and the ATTORNEY GENERAL AND MINISTRY OF JUSTICE, ought to have known that a Court Order was required to give effect to the eviction notice.
 3. The Defendant, JANE DOE, made defamatory comments about the Plaintiff that lowered the Plaintiff's reputation in the community. The statements made were contrary to the Libel and Slander Act [RSBC 1996] c. 263.
 4. The Defendants, SUNSHINE COAST CAMPGROUND GROUP LTD and CREEKSIDE CAMPGROUD, are vicariously liable for the actions of the Defendant JANE DOE.
 5. The Defendant, SUNSHINE COAST CAMPGROUND GROUP LTD, as the owner and employer, is vicariously liable for the conduct of CREEKSIDE CAMPGROUND and JANE DOE.
 6. The Defendant, MPSSGBC, is jointly and severally liable for torts committed by the RCMP officers pursuant to the Police Act [RSBC 1996] c. 367, section 20.
 7. The Defendants jointly or severally acted maliciously, violently, oppressively and with gross recklessness in bringing effect to the eviction of the Plaintiff without any legal authority to do so, because the Plaintiff had a prior criminal record. The Defendants are therefore jointly and severally liable for punitive or exemplary damages.
 8. The Defendant, MPSSGBC, knew or ought to have known of the unprofessional conduct of the RCMP. The Defendant, MPSSGBC, is therefore liable, including liable for punitive or exemplary damages.
 9. The Defendants are jointly and severally liable for violating the Plaintiff's legal rights under the Constitution Act, 1982, Part I, Canadian Charter of Rights and Freedoms.
 10. The Defendants are jointly and severally liable for violating the Plaintiff's legal rights under Section 7, the right to life, liberty and security of person, pursuant to the Constitution Act, 1982, Part I, Canadian Charter of Rights and Freedoms.

11. The Defendants are jointly and severally liable for violating the Plaintiff's legal rights under Section 9, the right not to be arbitrarily detained, pursuant to the Constitution Act, 1982, Part I, Canadian Charter of Rights and Freedoms.
 12. The Defendants are jointly and severally liable for violating the Plaintiff's legal rights under Section 11(d), the right to be presumed innocent until proven guilty pursuant to the Constitution Act, 1982, Part I, Canadian Charter of Rights and Freedoms.
 13. The Defendants are jointly and severally liable for violating the Plaintiff's legal rights under Section 11(h), the right not to be tried twice for the same crime, pursuant to the Constitution Act, 1982, Part I, Canadian Charter of Rights and Freedoms.
 14. The Defendants are jointly and severally liable for violating the Plaintiff's legal rights under section 12, the right not to be subjected to cruel and unusual punishment, pursuant to the Constitution Act, 1982, Part I, Canadian Charter of Rights and Freedoms.
 15. The Defendants treated the Plaintiff arbitrarily because of the Plaintiff's prior criminal record.
 16. The Defendants continually harassed the Plaintiff over several years; and, therefore, the Defendants have also violated the Plaintiff's legal rights over several years.
 17. The RCMP officers abused their authority by assisting the Defendants, SUNSHINE COAST CAMPGROUND GROUP LTD, CREEKSIDE CAMPGROUND, and JANE DOE, by entering a public place and a private dwelling place, harassing and slandering the Plaintiff based on knowledge of the Plaintiff's criminal record that was gained from employment as RCMP officers.
 18. The Defendants committed civil contempt of the authority vested in the Residential Tenancy Branch, the Provincial Court of British Columbia and the Supreme Court of British Columbia.
- [13] In summary, Mr. Knight's specific legal claim against the Crown is for malicious prosecution. He also claims against the all defendants, including the Crown, for violations of specific Charter rights. In submissions, Mr. Knight confirmed that his claim against the Crown is for malicious prosecution and that that all of his Charter claims against the Crown arise out of the malicious prosecution claim. At the hearing, Mr. Knight also submitted that the Crown participated in a conspiracy to evict him from the Creekside site and destroy his reputation. However, as that claim has not been pleaded it is not before me.

ISSUES

- [14] The two issues on this application are:
1. Is the matter suitable for determination by summary trial?
 2. If so, has Mr. Knight proved his claims against the Crown?

ANALYSIS

Is the matter suitable for determination by summary trial?

- [15] There is no dispute about the legal principles applicable to this issue. Rule 9-7(15) establishes that a matter is suitable for determination by summary trial unless the evidence before the court is insufficient to allow the judge to find the facts necessary to decide the issues on the application or it would be unjust to decide the issues on the application.
- [16] The Court of Appeal elaborated on the meaning of these requirements in *Gichuru v. Pallai*, 2013 BCCA 60 at paras. 28-35. Two points are relevant to this case. First, all parties must be prepared to prove their claim or defence: a party cannot "simply insist on a full trial in the hopes that with the benefit of viva voce evidence, 'something might turn up'" (*Gichuru* at para. 32, citing *Everest Canadian Properties v. Mallmann*, 2008 BCCA 275 at para. 34). Second, the factors relevant to the justness of proceeding summarily include the amount involved; the complexity of the matter; its urgency; prejudice; the cost of a full trial; whether credibility is an issue; whether a summary trial would complicate resolution of the dispute; and concern about litigating in slices.
- [17] Mr. Knight argues that the Crown's application is premature because examinations for discovery have not been completed. However, the suggestion that something might turn up on discovery is insufficient to defeat a summary trial application. In the face of a summary trial application, the responding party must take every reasonable step to ensure it has the evidence it needs to support its position: *Tassone v. Cardinal*, 2014 BCCA 149 at para. 38.
- [18] Mr. Knight did not do that here. The Crown filed the summary trial application in December 2019, after Mr. Knight had failed to respond to its prior demands for particulars. Mr. Knight provided particulars on April 1, 2020. The Crown produced its documents in the fall of 2019 and responded to Mr. Knight's request for copies of them on January 2, 2020.
- [19] Mr. Knight claimed that the defendants had "refused" to participate in examinations for discovery. I am not concerned with the other defendants in this application and that statement is not accurate with respect to the Crown. While Mr. Knight wrote to ask to schedule discoveries, he did not respond to the Crown's request that he provide particulars so it could determine an appropriate representative, or that he inform the Crown whom he wanted to discover. He did not identify a representative and, as noted, did not provide particulars for several months. Moreover, Mr. Knight did not serve an appearance notice or comply with the other requirements of Rule 7-2(13) respecting examinations for discovery. While I appreciate that the pandemic has affected such matters, there is no evidence that Mr. Knight took any steps to schedule discovery of the Crown after the summary trial application was filed in December 2019.
- [20] The Crown's application is not premature. The matter is suitable for summary determination if I can fairly decide the issues on the evidence before me.

- [21] In my view, I can. The legal claim against the Crown is for malicious prosecution. The two elements of malicious prosecution at issue in this case are whether the prosecution was undertaken without reasonable and probable grounds, and whether it was motivated by malice or a primary purpose other than that of carrying the law into effect. Mr. Knight has had full Crown disclosure and has had the opportunity to put relevant evidence before me. I have his affidavits and those of the two Crown counsel involved in his case.
- [22] Mr. Knight did not raise any factors going to unjustness. However, I have considered them. In my view, determining the merits of the claim against the Crown promotes the goals of the summary trial process. These claims are distinguishable from those against the other defendants because the Crown was not involved in the incident that led to Mr. Knight's arrest. His allegations against the Crown are serious and should be addressed in a timely way. The issues are not legally or factually complex. Summary trial avoids the additional costs associated with proceeding to a full trial against this defendant. Litigating in slices is not a concern.
- [23] I conclude that the matter is suitable for summary trial.

Has Mr. Knight Proved his Claim against the Crown?

- [24] Both parties rely on *Miazga v. Kvello*, 2009 SCC 51 as the leading case on the tort of malicious prosecution. Mr. Knight must prove on a balance of probabilities the following elements:
1. The prosecution was initiated by the defendant;
 2. It was terminated in the plaintiff's favour;
 3. It was undertaken without reasonable and probable grounds; and
 4. It was motivated by malice or by a primary purpose other than that of carrying the law into effect.
- [25] The Crown does not take issue with the first two elements: it charged Mr. Knight and it stayed those charges. The third element requires an objective analysis based on the circumstances known to the prosecutor at the time of the charge and from then until it was stayed: *Miazga* at paras. 75-76.
- [26] The evidence in the RTCC provides reasonable and probable grounds for the charges that Ms. West approved. It lists eight police witnesses and one lay witness who observed the arrest. Five of the six RCMP officers' narratives in the RTCC record that Mr. Knight swung a stick at the site manager's head and at the police officers when they entered the bus to arrest him. This evidence is sufficient to establish reasonable and probable grounds for the charges Ms. West approved under s. 276(a) and s. 88 of the Code. Subsequently, Ms. West learned more about the background, in particular, the acrimonious relationship between Mr. Knight and Creekside, but none of this diminished the weight of the evidence about the incident that gave rise to the charges. Ms. West deposes that she did not stay the charges because the likelihood of conviction had changed; rather, it was because of the site

manager's concern about Mr. Knight.

- [27] In his submission, Mr. Knight does not directly address this element of the tort. Rather, he focuses on the ulterior motives he says the Crown had for charging him, which is the subject of the fourth element. Mr. Knight implies that it was unreasonable to call "a stick a weapon" and to call "self-defence an assault", but these suggestions fall far short of proving that the Crown did not have reasonable and probable grounds to approve the charges.
- [28] In short, I am satisfied the Crown had reasonable and probable grounds to commence the prosecution, and to pursue it until circumstances came to light that justified a stay of proceedings. Once it has been established that reasonable and probable cause existed to commence or continue a criminal prosecution from an objective standpoint, the inquiry need go no further: *Miazga* at para. 75.
- [29] Although unnecessary to the disposition of this application, I will nevertheless consider Mr. Knight's allegations that the Crown had an ulterior motive in pursuing charges against him. In my view, he has also failed to establish this element of the tort.
- [30] Proof of malice or an ulterior motive, the fourth element in *Miazga*, does not entitle the court to review the Crown's exercise of prosecutorial discretion. Rather, a plaintiff must lead evidence to prove that the Crown stepped outside the prosecutorial role and acted with a motive that involved abuse or perversion of the criminal justice system: *Miazga* at para. 7. That is an onerous standard: *Nelles v. Ontario*, [1989] 2 S.C.R. 170 at 193.
- [31] Mr. Knight claims that the Crown acted with malice or prosecuted him for an improper purpose because its sole motive in laying the charges was to trigger the imposition of bail conditions that would ban him from the site, thereby allowing Creekside to evict him and remove his residence from the site.
- [32] In support of this claim, he points to the following facts.
- [33] First, Mr. Knight says there is no evidence establishing that Creekside had the authority to evict him before his arrest and charges. He relies on the Residential Tenancy Board decisions finding that his occupancy of the site was a "licence to occupy" and not a "tenancy" subject to its jurisdiction.
- [34] Second, the RTCC contains information that Mr. Knight has 34 PRIME files. In 10 of these, he is the subject of the complaint; in four, he is of interest; in one, he is chargeable; and in one, he is suspect. The RTCC includes three recent PRIME files of complaints against Mr. Knight. It also contains Mr. Knight's criminal record, which includes a 1999 conviction for exposing his genitals to a person under 16.
- [35] Third, Mr. Knight notes that a document dated March 7, 2000 in the Crown's List of Documents, which is described as a risk assessment in the "High Risk Offender Community Notification Program."

- [36] Fourth, he says that the timing of the stay, which was after Creekside evicted him, is significant and demonstrates that the Crown had no interest in proceeding after he was evicted.
- [37] These facts do not prove that the Crown acted with malice or for an improper purpose in prosecuting Mr. Knight. There is no evidence demonstrating whether Creekside's eviction of Mr. Knight was lawful. The Residential Tenancy Board decision simply declines jurisdiction. It does not say that Creekside cannot evict Mr. Knight.
- [38] The information about Mr. Knight's PRIME files and his dated sexual offence conviction contained in the RTCC do not establish that the Crown's motive in charging him was improper. The Crown Counsel Charge Assessment Guidelines require crown counsel to consider a number of factors in assessing whether it is in the public interest to prosecute once the "substantial likelihood of conviction" test has been met. Those factors include the person's previous convictions and whether there are grounds to believe that the offence is likely to be continued or repeated. It was necessary for Ms. West to consider Mr. Knight's criminal record and the complaints relating to the site in order to properly exercise her prosecutorial discretion. With respect to Mr. Knight's third fact, inclusion of a document on the Crown's list of documents does not establish that Ms. West considered it. Even if she had, this falls far short of establishing malice. There is no evidence that Ms. West knew Mr. Knight or had any prior dealings with him.
- [39] Ms. West's affidavit fully explains the timing of the stay. After her interview with the site manager, she considered that prosecuting Mr. Knight on the charges was not in the public interest. She was entitled to take into account the site manager's concerns. Even assuming Ms. West decided to stay the charges because Mr. Knight had left the community (and there is no evidence of this), she was entitled to consider that fact in assessing the public interest and exercising her prosecutorial discretion.
- [40] The fact that Mr. Knight had a dated sexual offence conviction and an equally dated high risk offender assessment does not prove his contention that the Crown's motive in charging him was to drive a "high risk offender" out of the community.
- [41] The core of Mr. Knight's claim is that the Crown, the RCMP and Creekside acted together, and, he goes so far as to say in his submissions, "entered into an agreement" to force him out of the Creekside site. There is no evidence that the Crown acted together with the RCMP in any improper way. The Crown received the RTCC and decided to approve charges. It later stayed them, having appropriately interviewed the site manager in preparation for the trial. In that sense, and only that sense, the Crown acted "together" with the other defendants. That is routine and necessary in any criminal prosecution. There is no evidence at all of any prior agreement or plan between the Crown and the other defendants to oust Mr. Knight from the site by provoking a situation where charges could plausibly be laid, then seeking bail conditions that would enable Creekside to remove his property.

[42] Finally, I note that although Mr. Knight takes issue with the bail conditions, he has presented no evidence that they were unusual in the circumstances.

CONCLUSION

[43] The Crown's application is granted. The action against the Crown is dismissed. If the parties wish to speak to costs, they may make submissions to me in writing within 60 days of the date of this decision.

"Iyer J."

[1] Ms. West could not recall if she reviewed the video and photograph before deciding to charge Mr. Knight, but says it would not have affected her decision.)

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/20/13/2020BCSC1338.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/knight-v-british-columbia-2020>

Prepared on 26 October 2026 · Esheria