

CANADA / JUDGMENT

Kompaneets v. British Columbia

2022 BCSC 1634

COURT

Supreme Court of British Columbia

DECIDED

19 August 2022

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2022 BCSC 1634 Kompaneets v. British Columbia

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Kompaneets v. British Columbia,

2022 BCSC 1634

Date: 20220819

Docket: S-1912633

Registry: Vancouver

Between:

Vladimir Kompaneets

Plaintiff

And

Her Majesty The Queen

in Right of the Province of British Columbia

Defendant

Before: The Honourable Justice Ahmad

Oral Reasons for Judgment

In Chambers

The Plaintiff, appearing in person:

V. Kompaneets

Counsel for the Defendant:

A. Choi

Place and Date of Hearing:

Vancouver, B.C.

August 15, 19, 2022

Place and Date of Judgment:

Vancouver, B.C.

August 19, 2022

[1] THE COURT: I am providing these reasons for judgment orally. If a transcript is requested, I reserve the right to amend the reasons for clarity. However, in that case, neither the reasoning nor the outcome will change.

I. Introduction

[2] On this application, the defendant, Her Majesty the Queen in the right of the Province of British Columbia (the "Province"), seeks an order to dismiss the claim brought against it by the plaintiff, Vladimir Kompaneets.

[3] The Province relies on Supreme Court Civil Rules, R. 9-5(1)(a) and, alternatively, R. 9-5(1)(d), which allow the Court to strike all or part of a pleading that discloses no reasonable claim or that is an abuse of process. It argues that both provisions apply in this case, such that the whole of the notice of civil claim should be struck.

[4] In the further alternative, the Province seeks an order dismissing the whole of the claim pursuant to R. 9-6, the summary judgment rule, on the basis that the claim was brought outside of the time limits contemplated by s. 6 of the Limitation Act, S.B.C. 2012, c. 13.

II. Legal basis

[5] Under R. 9-5(1)(a), the Court can order that a notice of civil claim be struck if it "discloses no reasonable claim". A claim can be struck under that Rule only if it is "plain and obvious" that the claim has no reasonable prospect of success: *Nevsun Resources v. Araya*, 2020 SCC 5 at para. 64.

[6] Pursuant to R. 9-5(2):

No evidence is admissible on an application under subrule (1) (a).

[7] In other words, to assess an application to strike under R. 9-5(1)(a), I am restricted to what is set out in the notice of claim itself, without any reference to evidence. The same restriction does not apply to an application made under R. 9-5(1)(d), that is, that the proceeding is an

abuse of process. However, the only evidence that can be admissible on an application under R. 9-5(1)(d) is evidence relevant to the question of whether the proceeding is an abuse of process of the court: *Kamoto Holdings Ltd. v. Central Kootenay (Regional District)*, 2022 BCCA 282 at para. 30.

- [8] As its final alternative, the Province relies on R. 9-6(4), which allows a defendant, after serving a response to civil claim, to apply for judgment dismissing all or part of a claim. To succeed under that Rule, the applicant must meet what has been referred to as the "difficult threshold" of establishing that there are no triable issues of fact raised in the claim: *Northwest Organics, Limited Partnership v. Maguire*, 2015 BCSC 1918 [*Northwest Organics*] at para. 38.
- [9] Unlike an application to strike, evidence is admissible on an application under R. 9-6(4). Specifically, a respondent can provide evidence to establish there is a genuine issue for trial: *Northwest Organics* at para. 38.

III. Discussion and analysis

- [10] I turn to the first basis on which the Province seeks to have the notice of civil claim struck, that is, whether the notice of civil claim discloses any reasonable claim. As noted, no evidence is admissible on that analysis. Rather, I must consider only the facts set out in the claim.
- [11] In this case, the notice of civil claim sets out the statement of facts on which the claim is based in one line as follows:

Unreasonable processing under the Criminal Records Review Program (CRRP)

- [12] The notice of civil claim does not set out any other facts or information regarding the circumstances in which the alleged "unreasonable processing" occurred.
- [13] Neither the relief sought nor the legal basis set out in the notice of civil claim provides any further insight into the factual basis for the claim. Under "Part 2: Relief Sought" in the notice of civil claim, Mr. Kompaneets seeks the following relief:

At the discretion of the Supreme court of British Columbia

- [14] No further information is provided to alert the Province, or the Court for that matter, as to the specific relief sought.
- [15] Under "Part 3: Legal Basis" in the notice of civil claim, Mr. Kompaneets relies on:

Constitutional Act, 1982 Part one, #8

- [16] With no further elucidation, I assume that reference to "#8" is to s. 8 of the Constitution Act, 1982. That section provides:

8. Everyone has the right to be secure against unreasonable search or seizure.

- [17] As was the case in respect of the facts alleged in the notice of civil claim or, more appropriately stated, lack of facts alleged, the notice of civil claim does not provide any further facts or any information whatsoever regarding an "unreasonable search and seizure", such as who conducted the search or seizure or for what purpose, or even the date that the referenced search and seizure occurred.
- [18] The three lines from the notice of civil claim that I have referenced above are the only pieces of information set out in the notice of civil claim regarding the claim. In my view, those three lines are wholly inadequate to meet the purpose of pleadings; that is, to clearly define the issues of fact and law to be determined by the court: *Stoneman v. Denman Island Local Trust Committee*, 2010 BCSC 636 at para. 16.
- [19] In *Weaver v. Corcoran*, 2017 BCCA 160, the Court of Appeal reiterated the function of pleadings at para. 63 as follows:
- [63] The function of pleadings is to define and clarify the issues of fact and law for determination. Pleadings give opposing parties fair notice of the case to be met and set the boundaries and context for matters such as pre-trial discovery, presentation of evidence and argument at trial. The plaintiff defines the issues by stating, succinctly, the material facts for each cause of action, namely, those necessary to support the complete cause. Upon seeing the case to be met, the defendant responds in a manner which allows the court to understand the issues of fact and law that must be decided [citations omitted].
- [20] In *Gill v. Samra*, 2022 BCSC 871 [Gill], Justice Ball considered an application to strike a family law claim under R. 11-2 of the Supreme Court Family Rules, the corresponding rule to R. 9-5(1)(a). In that case, the Court concluded that the initial pleadings were "devoid of statements of material fact which would provide the applicants any clue as to the case they were expected to answer". A follow-up request for particulars did nothing to rectify the situation. The claim was struck.
- [21] In this case, the notice of civil claim contains considerably fewer statements of fact than was the case in *Gill*. Indeed, comparatively speaking, to describe the notice of civil claim in this case as being "devoid of statements of material fact which would provide the [applicant] any clue as to the case they were expected to answer" would be a gross understatement. Given the paucity of any specifics of fact on which the unspecified claim is based, or about the unspecified relief sought on the basis of the notice of civil claim, the Province has no clue as to the case it has to meet. It is simply impossible to discern the basis of the claim from the notice of civil claim.
- [22] In other words, "fair notice of the case to be met" has not been provided. Rather, given the state of the pleading, the Province is left to guess not only the facts on which the claim is based, but the cause of action itself.

- [23] Indeed, in its submission on the alternative applications to strike under R. 9-5(1)(d) and the application to dismiss under R. 9-6, the Province has done just that. Rather than referencing any allegations of fact set out in the claim, there being none, it has assumed the basis on which the action was commenced. Specifically, for the purpose of its argument, the Province has assumed that the action arises out of Mr. Kompaneets' refusal to be fingerprinted for the purposes of a criminal record check in relation to his employment with Paladin Security Group, and specifically the Province's July 27, 2017 request to submit his fingerprints to the RCMP in order to complete the criminal record check pursuant to s. 27 of the Criminal Records Review Act, R.S.B.C. 1996, c. 86.
- [24] While the Province's assumption of the claim particulars may be accurate, it is just that: an assumption that was made necessary by the plaintiff's failure to articulate in any way whatsoever the factual basis for the claim or even to identify a cause of action or remedy sought. With the exception of the reference to the "Criminal Record Review Program" in the notice of civil claim, none of the Province's assumed facts are set out or even referred to in the claim.
- [25] Mr. Kompaneets argues that notwithstanding any deficiency in the notice of civil claim, the Province was aware of the nature of the claim and the facts giving rise to the claim, all of which he says are set out in the affidavits filed on December 19, 2019, and January 17, 2020. Notably, however, those affidavits were filed in Action Number S191152, a different, although apparently related, action in which he named his former employer, Paladin Security Group and "The Ministry of Public Safety and Solicitor General" as defendants. Given those affidavits that Mr. Kompaneets says serve as notice of the claim, what he says is the public interest nature of the claim, and the fact that he is not represented by counsel, Mr. Kompaneets argues that any deficiencies in the notice of civil claim should be overlooked and the claim ought not be struck. I reject that submission.
- [26] Firstly, while acknowledging that no evidence is admissible on an application under R. 9-5(1)(a), in the circumstances, I have briefly reviewed the contents of those affidavits. The text of both appear to address the Province's response that no facts are pled in the notice of claim and the reasons for that. While there was some reference in the text of the second of those affidavits to the request for fingerprints, the text of neither affidavit expressly sets out the facts that may give rise to the cause of action.
- [27] Mr. Kompaneets argues that information is contained in the exhibits to the affidavits, which comprise, by my rough estimate, over an inch of double-sided material. Presumably it is his expectation that the Province and the Court review that volume of material to ascertain the facts on which his claim is based. In my view, that expectation ignores the purpose of pleadings.

- [28] Furthermore and in any event, while the evidence contained in those affidavits may be relevant to an application under R. 9-5(5) or R. 9-6, as noted, they are not admissible on this application under R. 9-5(1)(a). The question on this application is whether the notice of civil claim as drafted discloses a reasonable claim. As I have set out above, in my view, the notice of claim as drafted does not set out any facts on which to base a cause of action. It follows that it "discloses no reasonable claim".
- [29] Noting that no application to amend the notice of civil claim has been made, I have nonetheless considered whether the pleading can be "preserved" by amendments in a way that would put it onside the basic requirements of a pleading as contemplated in *Drummond v. Moore*, 2012 BCSC 496 at paras. 22 and 23. I have concluded that it cannot.
- [30] In my view, even if Mr. Kompaneets had made an application to amend, given the failure to set out any facts on which to support a recognized cause of action, the notice of civil claim requires wholesale additions that go far beyond "amendments" that would elucidate the claim.
- [31] In any event, even when faced with the notice of application that clearly set out the Province's position that the notice of claim should be struck on the basis that it did not contain any material facts, Mr. Kompaneets failed to amend or even to apply to amend the claim. He chose instead to rely on affidavits filed in what appears to be a different action and on his insistence that the public interest dictates that he be allowed to proceed without complying with the rules of procedure.
- [32] Without any application to do so, I also decline to allow any amendments to the claim.
- [33] For the reasons set out above, I order that the notice of civil claim filed on November 7, 2019, be struck as disclosing no cause of action, pursuant to R. 9-5(1)(a)
- [34] During submissions, I advised Mr. Kompaneets and counsel that I would consider and determine the application under R. 9-5(1)(a) before hearing submissions on the evidence with respect to the applications under R. 9-5(1)(d) or R. 9-6. Having come to the conclusion I have on the R. 9-5(1)(a) application, I do not have to decide those alternative applications. Accordingly, it is not necessary to consider the affidavit evidence referred to by Mr. Kompaneets in response to those applications.
- [35] The Province is entitled to costs of this application.

"Ahmad J."

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