

CANADA / JUDGMENT

Le Soleil Hospitality Inc. v. Louie

2008 BCCA 206

COURT

British Columbia Court of Appeal

DECIDED

7 May 2008

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2008 BCCA 206 Le Soleil Hospitality Inc. v. Louie COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: Le Soleil Hospitality Inc. v. Louie, 2008 BCCA 206 Date: 20080507 Docket: CA035124

Between: Le Soleil Hospitality Inc., and Le Soleil Restaurant Inc. Respondents (Plaintiffs) And

Andrew Louie, 668706 B.C. Ltd., 688571 B.C. Ltd., 708583 B.C. Ltd., 716642 B.C. Ltd., 716648 B.C.

Ltd., 700439 B.C. Ltd., 587019 B.C. Ltd., and 585503 British Columbia Ltd. Appellants (Defendants)

Before: The Honourable Chief Justice Finch The Honourable Madam Justice Prowse The

Honourable Madam Justice Kirkpatrick Oral Reasons for Judgment G. Phillips Counsel for the

Appellant R. Sewell, Q.C. S. Griffin Counsel for the Respondent Place and Date: Vancouver, British

Columbia 7 May 2008

- [1] PROWSE, J.A.: Dr Louie and a series of numbered companies controlled by him (collectively referred to as "Dr. Louie") are appealing from two orders made by Mr. Justice Pitfield. The first order, made December 27, 2006, provides that a letter of intent ("the LOI") entered into between Dr. Louie and the respondents on October 21, 2005, constitutes a binding and enforceable agreement between them. The second order, made May 2, 2007, provides that clause 8 of the LOI does not limit the respondents' claims for relief for breach of that agreement to \$10,000. The issue of the appropriate remedy for the alleged breaches of contract by Dr. Louie is being held in abeyance pending the outcome of these appeals.
- [2] Dr. Louie submits that Mr. Justice Pitfield erred in finding that the LOI was a binding and enforceable agreement. In particular, Dr. Louie submits that Mr. Justice Pitfield erred in failing to find that the LOI was simply an agreement to agree, or an agreement to negotiate, requiring further negotiations between the parties, and in failing to consider the evidence of Dr. Louie's lawyer, Mr. Epstein, who was involved in the negotiations leading to the execution of the LOI, in reaching his decision.
- [3] Dr. Louie also submits that Mr. Justice Piffeld erred in finding that clause 8 of the LOI, by its terms, did not limit the respondents' monetary recovery for breach of the LOI to \$10,000. On appeal, counsel for Dr. Louie acknowledges that Mr. Justice Pitfield was correct in holding that clause 8 does not limit, or affect, the respondents' right to seek an order of specific performance.

- [4] The decisions of Mr. Justice Pitfield may be found at 2006 BCSC 1920 and 2007 BCSC 595.
- [5] Mr. Phillips has said all that reasonably can be said in favour of allowing this appeal. I am not persuaded, however, that Mr. Justice Pitfield erred either in finding that the LOI was a binding and enforceable agreement between the parties or in finding that clause 8 of the LOI did not have the effect of limiting the respondents' remedies for breach of the LOI to a payment of \$10,000. I am satisfied that Mr. Justice Pitfield reached the correct conclusion with respect to these issues substantially for the reasons given by him.
- [6] With respect to the first order involving the interpretation of the LOI, while Mr. Justice Pitfield did not refer to the evidence of Mr. Epstein with respect to the construction of the LOI, I conclude that Mr. Epstein's evidence (which was contradicted by other evidence) was little more than his opinion concerning the intent of the parties during the course of negotiations and, as such, was of no assistance in determining the meaning of the LOI, which Mr. Justice Pitfield found was evident on its face.
- [7] With respect to the interpretation of clause 8 of the LOI, it is apparent that Mr. Justice Pitfield interpreted that clause in the full context of the complex relationship between the parties in finding that it did not represent a provision limiting the respondents in their available remedies. In that regard, I will refer only to para 11 of his reasons for judgment, where he states: The conclusion that clause 8 should be construed to limit the plaintiffs' remedy is contradicted by the fact that, on its face, the amount of the security deposit or bond cannot reasonably be regarded as a pre-estimate of damage to be sustained in the event that either party refused to close. The dispute between the parties involved an application for an injunction bearing upon the operation of a hotel as a going concern, the purchase and sale of real estate with a value of approximately \$5 million, and the modification of commercial restaurant leases essential to the operation of the hotel to which the agreement relates. Given the nature of the dispute and its commercial importance, it cannot reasonably be said that the agreement permitted reversion to the status quo upon payment of \$10,000.
- [8] In the result, I would dismiss the appeal.
- [9] FINCH, C.J.B.C.: I agree.
- [10] KIRKPATRICK, J.A.: I agree.
- [11] FINCH, C.J.B.C.: The appeal is dismissed. "The Honourable Madam Justice Prowse"

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