
CANADA / JUDGMENT

Liu v. 0880984 B.C. Ltd.

2020 BCSC 1342

COURT

Supreme Court of British Columbia

DECIDED

10 September 2020

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2020 BCSC 1342 Liu v. 0880984 B.C. Ltd.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Liu v. 0880984 B.C. Ltd.,

2020 BCSC 1342

Date: 20200910

Docket: S1710127

Registry: Vancouver

Between:

Bonan (Jessica) Liu

Plaintiff

And

0880984 B.C. Ltd. dba MCL Motor Cars, Burrard Autostrasse Collision Ltd.,

Defendants

Before: The Honourable Madam Justice Iyer

Reasons for Judgment

The Plaintiff, Appearing in Person:

Bonan Liu

Counsel for Defendants:

K. Davies

J. Dawson

Place and Date of Hearing:

Vancouver, B.C.

August 13, 2020

Place and Date of Judgment:

Vancouver, B.C.

September 10, 2020

OVERVIEW

- [1] This application arises from a dispute over the repair of an expensive limited edition vehicle. The plaintiff, Bonan Liu, owns a 2014 DB9 Century Skyfall Aston Martin ("Vehicle"). In December 2015, she was involved in a single car accident that damaged the Vehicle. She hired Burrard Autostrasse Collision Ltd. ("Burrard"), which is a body shop, to do the repairs, and it sub-contracted or "sub-let" some of the work to 0880984 BC Ltd dba MCL Motor Cars ("MCL"), which is a repair shop.
- [2] In September 2017, when the work was completed, Ms. Liu refused to pay for the repairs. Instead, she filed a notice of civil claim on October 31, 2017, alleging that Burrard and MCL had deceived and coerced her, breached their contract, breached the Competition Act, R.S.C. 1985, c. C-34, breached their fiduciary duties, and colluded to take advantage of her personal wealth ("Claim"). She alleged various personal injuries and sought \$300,000 in damages plus the value of a new Aston Martin DB9.
- [3] In their responses to the Claim, Burrard and MCL denied all of Ms. Liu's allegations. Burrard filed a counterclaim seeking dismissal of the Claim and alleging breach of contract by Ms. Liu. The matter came before me as an application for summary trial by Burrard. MCL adopted Burrard's position that the court should dismiss Ms. Liu's claim and took no position on Burrard's counterclaim.
- [4] For the reasons that follow, I would dismiss Ms. Liu's claim, and allow Burrard's counterclaim.

BACKGROUND FACTS

A. History of the Litigation

- [5] Ms. Liu has been represented by four different counsel during this litigation but was self-represented on the present application.

- [6] Shortly before the Claim was filed, the parties entered into a settlement agreement that would have seen Ms. Liu pay approximately half of the outstanding invoice amount, obtain the Vehicle and release the defendants from all claims ("Release"). Ms. Liu was represented by counsel at the time. She signed the Release but did not pay the money. Burrard retained the Vehicle and Ms. Liu instructed her counsel to file the Claim.
- [7] In December 2017, the matter was set for trial on December 9, 2019. Ms. Liu sought an adjournment through new counsel on the basis that the parties wanted to attempt mediation. However, Ms. Liu did not attend the mediation and the matter did not progress.
- [8] Burrard applied for a summary trial, which was set for February 13, 2020. Ms. Liu was not represented by counsel at that hearing. She sought an adjournment, saying she wanted to retain new counsel and to amend the Claim. Justice Sharma granted the adjournment but required Ms. Liu to amend the Claim by February 24, 2020. She also required Ms. Liu to respond to Burrard's summary trial application by March 27, 2020. Although the summary trial was scheduled for April 9, 2020, it was adjourned because of Covid-19.
- [9] Ms. Liu amended her Claim herself and filed it on February 20, 2020. She did not file any response to the summary trial application before March 27, 2020 and has not done so since.
- [10] At the outset of the hearing before me, Ms. Liu said that she had not been able to file her material because the Registry had rejected it when she attempted to do so the day before the hearing. I permitted her to send material to the other parties and myself electronically, but she said the material was not in electronic format. I determined that the hearing would proceed and that Ms. Liu would have an opportunity to make submissions.
- [11] As a result, the evidence consists only of what was tendered by the defendants. It includes affidavits and portions of Ms. Liu's examination for discovery.

B. Facts

- [12] On December 23, 2015, Ms. Liu and the Vehicle were involved in a single car collision. There was visible damage to the body of the Vehicle. Ms. Liu had it towed to Burrard. She was given a rough estimate of the cost of repairs at \$24,000, based on the observable damage and was told the Vehicle would have to be disassembled and inspected before a full quote would be given. She agreed to this.
- [13] Upon further inspection in January 2016, Burrard discovered structural damage to the Vehicle's sub-frame, steering rack and brake assembly to the sub-frame. This increased the cost of repair significantly. Burrard told Ms. Liu that the repair cost could exceed \$100,000. Ms. Liu was not willing to approve this cost and had the Vehicle towed to Mainland Collision Ltd. ("Mainland"), another repair facility.

- [14] Aston Martin regulates the sale of certain vehicle parts, such as sub-frames, to repair facilities that it has certified. Burrard and MCL are certified by Aston Martin to do body work and repair work, respectively. Mainland is not; therefore, it could not obtain the parts and repair the Vehicle.
- [15] In July 2016, Ms. Liu had the Vehicle towed back to Burrard. It provided Ms. Liu with a formal initial estimate of \$132,755.88. As the cost of the parts Burrard would have to obtain from Aston Martin was high, Burrard required Ms. Liu to make an initial payment of \$50,000, a second payment of \$50,000 15 days later, and to pay the balance upon completion of the repairs.
- [16] Ms. Liu agreed to this in writing and paid the initial \$50,000. She signed a guarantee that she would make the other agreed-upon payments ("Payment Guarantee"), authorization for preparing a final estimate and fully disassembling the vehicle, authorization for Burrard to do the work, purchase materials, and to "sub-let" (sub-contract) portions of the work to others as Burrard considered necessary. The documents Ms. Liu signed also stipulated that the storage fees would accrue for any vehicle not picked up (and paid for) three days after completion of repairs. The cost of inside storage was \$200 per day; outside storage was \$60 per day.
- [17] Ms. Liu asked Burrard to do the repairs as soon as possible. However, she did not make the second \$50,000 payment. Representatives of Burrard met with Ms. Liu on September 13, 2016. They agreed that Ms. Liu would sign a second payment guarantee for the outstanding \$50,000 and final balance, and she did so.
- [18] Burrard repaired the Vehicle, sub-letting the mechanical repairs to MCL. It invoiced Ms. Liu on May 2, 2017 for \$135,545.89, of which she had paid only the initial \$50,000. Notably, over \$97,000 of this amount represented the cost of the parts Burrard purchased from Aston Martin to perform the repair. Burrard's labour cost was about \$12,000, or just under 9% of the total invoice.
- [19] Ms. Liu refused to pay Burrard's invoice and did not pick up her vehicle.
- [20] Burrard stored the Vehicle indoors, with storage fees of \$200/day accumulating from May 5, 2017 onwards. Burrard's director, Franklin Van Pykstra, deposes why this was necessary:
- Given the Vehicle's significant value, it must be stored in a dry indoor facility while remaining covered, with a charger on it constantly. The Vehicle is a collector's item. It should not be stored outside.
- [21] Mr. Pykstra explains that this has meant that the Vehicle occupies a stall that otherwise would be used to repair Burrard's customers' vehicles, causing Burrard to lose that repair revenue.
- [22] Mr. Pykstra also deposes that he had to pay \$306 for storage insurance for the Vehicle.

- [23] As I have noted, the parties settled their dispute in October 2017, at a time when Ms. Liu had legal counsel. She signed the Release and agreed to pay Burrard \$45,545.89. However, she did not pay Burrard anything and filed the Claim. Burrard accepted her repudiation of the settlement and brought its counterclaim.
- [24] Ms. Liu's Claim (which she amended on February 26, 2020) is difficult to follow. She acknowledges that Burrard informed her that the repairs would cost approximately \$100,000. She disputes that she authorized Burrard to subcontract any repair work to MCL. She acknowledges the storage fees quoted by Burrard but claims Burrard did not invoice her for these amounts. She acknowledges signing the Release but says she was coerced to do so. She claims the defendants breached the Competition Act by colluding to "corner the market" on Aston Martin repairs. She claims damages for various personal injuries and for travel to and from China, along with the value of a new Vehicle, \$300,000 and increased costs. The stated legal basis for her claims is coercion, breach of fiduciary duty and extortion of her as a "financially well off" person whose first language is not English.
- [25] None of the evidence before me supports these allegations.

ISSUES

- [26] The three issues are:
- Is this matter suitable for determination by summary trial?
 - If so, has Ms. Lui proved her claim?
 - Has Burrard proved its counterclaim?

ANALYSIS

Suitability for summary trial

- [27] I have no difficulty finding that this case is suitable for summary trial. As Ms. Liu tendered no evidence, there are no evidentiary issues before me. This is a straightforward contractual matter with a full documentary record. No credibility issues arise. Although Ms. Liu has pleaded fraud and possibly conspiracy, there is no evidentiary foundation for these claims. Efficiency and fairness support summary determination in this case.

Proof of the Amended Claim

- [28] It is apparent from what I have set out above that Ms. Liu has not proved any of the allegations in the Amended Claim. Ms. Liu has no legal or factual foundation for challenging the contracts she signed. Both Mr. Pykstra's affidavit evidence and Ms. Liu's admissions at her examination discovery establish that she contracted with Burrard to perform the repairs and agreed to terms including:

- Payment of the actual repair cost based on an initial estimate of \$132,755.88, in two advance installments of \$50,000 and the balance upon completion;
- Authorization of Burrard to sub-let work on the Vehicle to others, such as MCL; and
- Payment of storage fees at \$200/day for indoor storage or \$60/day for outdoor storage commencing three days after completion of the repairs.

- [29] The evidence also establishes that Ms. Liu signed two payment guarantees, entered into a settlement agreement regarding her failure to comply with her contractual promises, and breached the terms of all of these agreements.
- [30] In her submissions, Ms. Liu explained at length her belief that Burrard and MCL are taking advantage of her wealth and trying to 'rip her off.' She claimed to have proof or the ability to obtain proof of a fraudulent scheme whereby the defendants did not use genuine Aston Martin parts to repair the Vehicle. This appears to be based on inferences Ms. Liu draws from UPS shipping codes and dates.
- [31] Ms. Liu does not accept that there are restrictions on the sale of Aston Martin parts or that repair and body work must be performed by certified facilities. Instead, she characterizes this system as "collusion" and says it is contrary to the Competition Act.
- [32] Ms. Liu's submissions make it clear that she wanted the Vehicle repaired for \$50,000 and that is all she would pay. She does not regard herself as bound by any promises to pay more than that. She denies all of the evidence contrary to her belief about what the repair should cost and paints herself as the unwitting victim of conspiracy, extortion and fraud. There is no evidence and no legal basis for any of her claims.
- [33] Burrard's final invoice complies with the terms upon which the parties had agreed. Ms. Liu signed documents agreeing to pay storage fees and she did not challenge the appropriateness of storing the Vehicle indoors. There is no evidence of fraudulent misrepresentation: Ms. Liu admits in her pleading that she was told the repairs would cost about \$100,000 before she consented to the repairs and signed the documents. There is no evidence of coercion or undue influence. Ms. Liu took the Vehicle to Burrard initially, then took it to Mainland and, when Mainland could not do the repair, decided to take it back to Burrard. There is no fiduciary relationship between Burrard and Ms. Liu and no evidence of negligence. Finally, it was Ms. Liu who breached the contracts, not Burrard. When Ms. Liu refused to pay the settlement amount, Burrard was entitled to repudiate it.
- [34] Ms. Liu's action against Burrard is dismissed.

Proof of Burrard's Counterclaim

- [35] Burrard counterclaims for the unpaid cost of the repairs, which is \$85,545.89, plus pre-judgement interest of \$4,078.61 on that amount. It seeks indoor storage fees at the rate of \$400/day commencing on May 5, 2017 to the trial date, plus storage insurance of \$306. By my calculation, this amounts to \$328,930.50.
- [36] It was open to Ms. Liu to plead in her response to counterclaim that Burrard failed to mitigate its damages by storing the Vehicle indoors. Although she was represented by a lawyer at that time, failure to mitigate has not been pleaded. Therefore, there is no basis to reduce the claim for indoor storage fees: *Hosking v Mahoney*, 2010 BCCA 465 at para. 34.
- [37] The evidence establishes Burrard's counterclaim.

CONCLUSION

- [38] In conclusion, I dismiss Ms. Liu's claim in its entirety and I grant judgment to Burrard on its counterclaim for \$328,930.50
- [39] In its written submission, Burrard seeks an award of special costs against Ms. Liu.
- [40] Recently, in *Roussy v Savage*, 2020 BCSC 487 at paras 12-16, this court summarized the principles governing an award of special costs under Rule 14-1(1)(b). Briefly, special costs are a punitive measure that a court may award where a party (or non-party) has engaged in reprehensible conduct. Although "reprehensible" covers a broad range of misconduct, the party seeking a special costs award must demonstrate exceptional circumstances to justify the order: *Finness Yachting Inc. v. Menzies*, 2015 BCSC 2351 at para. 7.
- [41] *Mayer v. Osborne Contracting Ltd.*, 2011 BCSC 914 lists circumstances that may justify a special costs award (at para. 11):
- (a) where a party pursues a meritless claim and is reckless with regard to the truth;
 - (b) where a party makes improper allegations of fraud, conspiracy, fraudulent misrepresentation, or breach of fiduciary duty;
 - (c) where a party has displayed "reckless indifference" by not recognizing early on that its claim was manifestly deficient;
 - (d) where a party made the resolution of an issue far more difficult than it should have been;
 - (e) where a party who is in a financially superior position to the other brings proceedings, not with the reasonable expectation of a favourable outcome, but in the absence of merit in order to impose a financial burden on the opposing party;
 - (f) where a party presents a case so weak that it is bound to fail, and continues to pursue its meritless claim after it is drawn to its attention that the claim is without merit;

- (g) where a party brings a proceeding for an improper motive;
 - (h) where a party maintains unfounded allegations of fraud or dishonesty; and
 - (i) where a party pursues claims frivolously or without foundation.
- [42] Some of these factors are present here. Ms. Liu's claim is meritless and she has made resolution of the issue virtually impossible. Objectively assessed, her allegations of fraud, conspiracy, fraudulent misrepresentation, or breach of fiduciary duty are without legal foundation and she should not have advanced them. It is clear that Ms. Liu's conduct of the litigation has been frustrating and extremely unpleasant for Burrard.
- [43] However, although fundamentally wrong, Ms. Liu's passionate belief that the defendants treated her badly is subjectively genuine. Considering all of the circumstances in this case, I decline to award special costs against Ms. Liu.
- [44] The defendants shall have their costs of this application on Scale B.

"Iyer J."

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Prepared on 29 October 2026 · Esheria