

CANADA / JUDGMENT

Manavi v. Cascadia Apartment Rentals Ltd.

2017 BCSC 190

COURT

Supreme Court of British Columbia

DECIDED

6 February 2017

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2017 BCSC 190 Manavi v. Cascadia Apartment Rentals Ltd. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Manavi v. Cascadia Apartment Rentals Ltd., 2017 BCSC 190 Date: 20170206 Docket: S164264 Registry: Vancouver Between: Ali Manavi and Naghmeh Hesmati Plaintiffs And: Cascadia Apartment Rentals Ltd. Defendant Before: Master Bouck Reasons for Judgment Counsel for the Plaintiffs: A. Soliman S. Karim (Articled Student) Counsel for Defendant and proposed defendants Nacel Properties Ltd. ("Nacel") and CR Eleven Holdings Ltd ("CR Eleven"): A. Sabur Place and Date of Hearing: Vancouver, B.C. January 24, 2017 Place and Date of Judgment: Vancouver, B.C. February 6, 2017

Introduction

- [1] This action concerns alleged damages and loss resulting from a break and enter into the plaintiffs' apartment.
- [2] The plaintiffs seek orders to add Nacel and CR Eleven as defendants as well as amend the notice of civil claim (the "new NOCC") to plead, among other things, reliance on the Occupiers' Liability Act.
- [3] The proposed defendant Nacel objects to being added to the proceeding. While the proposed defendant CR Eleven concedes that it is a proper party to the proceeding, it takes issue with some of the content of the draft amendment NOCC.

Facts

- [4] The incident in question occurred on September 29, 2015. The plaintiffs were then occupying the apartment pursuant to a tenancy agreement naming Nacel as landlord. Shortly after entering to the agreement, and before occupying the apartment, the plaintiffs were advised in writing that the "Landlord's management company name has been changed from Nacel to Cascadia". A condition inspection report executed by the plaintiffs names Cascadia as the landlord.
- [5] CR Eleven is the owner of the building in which the apartment is situate. Cascadia and the proposed defendants are inter-related companies.

- [6] In their NOCC filed on May 11, 2016, the plaintiffs make the following pleas:
3. The defendant, Cascadia Apartment Rentals Ltd., previously known as Nacel Properties Ltd., has a place of business at #200 555 West 8th Avenue, Vancouver BC, V6B 1C6 (the "Defendant").
 4. At all material times the Defendant is in the business of operating a strata company.
 5. The Plaintiffs rented a unit at a building on 1107 - 1221 Homer Street, Vancouver BC, V6B 1C5 operated by the Defendant from April 1, 2014 to November 30, 2015 (the "Residence").
 10. The Defendant failed to meet its obligations to secure the building. Part 3: LEGAL BASIS
 1. The Defendant committed the tort of negligence.
 2. The Plaintiffs' claim is against the Defendant for damages for negligence that caused loss and injury to the Plaintiffs.
 3. The Defendants (sic) is responsible for the maintenance and security of the building.
 4. The Defendant failed its obligations. The Plaintiffs suffered loss and damages as a result.
- [7] The response to civil claim has been amended on one occasion with those amendments best described as wholesale replacement of the initial pleading. In the amended response, the defendant Cascadia denies owing any duty of care to the plaintiffs and rejects the claim entirely.
- [8] The new NOCC is attached as Schedule "A" to these reasons. As can be seen, the specific pleas regarding Nacel and CR Eleven are found in paras. 14 through 16 and 21c. Under Legal Basis, the plaintiffs claim that the "Defendants" were negligent and breached their statutory duty of care. Neither CR Eleven nor Nacel are identified as defendants in Part 1 of the proposed amended notice of civil claim.
- [9] No notice of trial has been taken out. Discussion
- [10] In their notice of application, the plaintiffs identify the sole legal basis for the application as "Rule 6-2(7)". That Rule provides: Adding, removing or substituting parties by order
- (7) At any stage of a proceeding, the court, on application by any person, may, subject to subrules (9) and (10),
 - (a) order that a person cease to be party if that person is not, or has ceased to be, a proper or necessary party,
 - (b) order that a person be added or substituted as a party if
 - (i) that person ought to have been joined as a party, or
 - (ii) that person's participation in the proceeding is necessary to ensure that all matters in the proceeding may be effectually adjudicated on, and

- (c) order that a person be added as a party if there may exist, between the person and any party to the proceeding, a question or issue relating to or connected with
 - (i) any relief claimed in the proceeding, or (ii) the subject matter of the proceeding that, in the opinion of the court, it would be just and convenient to determine as between the person and that party.
- [11] The notice of application does not make clear which sub-rule is relied upon but it must be either (b) or (c). The object of these sub-rules and considerations for the exercise of the court's discretion is described in *Alexis v. Duncan*, 2015 BCCA 135 at paras. 14-17, and *Terasen Gas Inc. v. TNL Construction Services Ltd.*, 2011 BCSC 1345 at paras. 6-9.
- [12] While the considerations under Rule 6-2(7) (b) and (c) are distinct, there must be some basis in the evidence and in the pleadings upon which the court can exercise its discretion: *Backer v. Backer*, 2005 BCSC 195 at paras. 38-39. In this case, the plaintiffs acknowledge that the new NOCC is flawed. Among other problems, the draft pleading does not identify the proposed defendants in the statement of facts nor, it appears to me, provide a factual basis on which a claim in either negligence or breach of statutory duty could be made out against either Nacel or CR Eleven. Indeed, paragraph 14 of the draft pleading would appear to absolve Nacel from any liability for the plaintiffs' losses. It is appreciated that the plaintiffs rely on the evidence of the lease agreement but the nexus between the lease agreement and a cause of action against either Nacel or CR Eleven is not sufficiently articulated so as to justify adding either of these entities pursuant to SCCR 6-2(7).
- [13] The proposed defendant CR Eleven is willing to be added to the proceeding but only if the new NOCC claim is modified. It is not up to the court to direct how the plaintiffs' pleadings should be re-drawn to support the relief sought or meet the position taken by CR Eleven. In any event, if CR Eleven agrees to being added as a defendant based on a further draft amended notice of civil claim, the parties can proceed with that relief by way of a consent desk order.
- [14] Having no proper basis on which to exercise my discretion, the application for relief sought in paragraphs (1) and (3) of the plaintiffs' notice of application is dismissed with liberty to re-apply upon filing further affidavit material, if deemed necessary by the applicant, and a revised draft amended notice of civil claim attached as Schedule "A" to the new notice of application.
- [15] Given this result, together with the sparsity of the legal basis content in the notice of application, the defendant Cascadia shall have its costs fixed at \$750 in any event of the cause, not payable forthwith. "C.P. Bouck" Master C.P. Bouck Schedule "A"

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