

CANADA / JUDGMENT

Nelson v. Gokturk

2020 BCSC 1212

COURT

Supreme Court of British Columbia

DECIDED

17 August 2020

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2020 BCSC 1212 Nelson v. Gokturk IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Nelson v. Gokturk, 2020 BCSC 1212 Date: 20200817 Docket: S1911912 Registry: Vancouver Between: Scott Nelson Plaintiff And Michael Gokturk Defendant Before: Master Muir Reasons for Judgment Counsel for the Plaintiff: M.P. Good Counsel for the Defendant: D. Yaverbaum Written Submissions of the Plaintiff received: August 11, 2020 Place and Date of Judgment: Vancouver, B.C. August 17, 2020

introduction

- [1] This application was made by the plaintiff by way of written submissions in lieu of an oral or telephone hearing, pursuant to COVID-19 Notice #14, for the production of a list of documents from the defendant and for an affidavit verifying the list of documents.

background

- [2] The underlying action involves a claim for breach of contract regarding the sale of bitcoin. The plaintiff, Scott Nelson, alleges that he contracted with the defendant, Michael Gokturk, to sell 50 bitcoin at \$10,700 CAD each for a total price of \$535,000 CAD, but that the defendant failed to pay.
- [3] The defendant denies that he contracted with the plaintiff in his personal capacity and says that the contract was with his now bankrupt company, Einstein Exchange Inc. ("Einstein"). Einstein ceased to operate in or about October 2019.
- [4] The notice of civil claim of this action was filed on October 22, 2019. After an order for alternative service was made on December 10, 2019 and service effected, the defendant filed his response to civil claim on January 6, 2020.
- [5] The plaintiff delivered his list of documents on January 22, 2020 and an amended list on January 29, 2020.

- [6] The defendant's list of documents was due on February 13, 2020. The plaintiff pursued the defendant vigorously to have him provide his list, but the defendant failed to do so and, hence, this application was brought.
- [7] The plaintiff also sent a notice to admit to the defendant on June 3, 2020, which was responded to.
- [8] The defendant produced a list of documents on August 4, 2020, the last day for response to this application. As a result, the defendant submits that the only issue is whether an affidavit of documents should be ordered and urges the court to deny this application. position of the parties The Plaintiff
- [9] The plaintiff points to *Gardner v Viridis Energy Inc.*, 2012 BCSC 1816 at para. 52, where the court stated: Rule 7-1(8) permits a court to order that a party provide an affidavit verifying its list of documents when in the absence of any adequate explanation, relevant documents have been omitted from a list of documents. Such an order may also be made where a party has shown a "dilatory and casual attitude to production of documents" leading to an inference that "either deliberately or by wilful indifference relevant documents may be hidden". Rule 7-1(8) should not be rigidly applied in a case involving very large numbers of documents. There must be evidence showing relevant documents have been omitted or that the disclosure has been inadequate: *Copithorne v. Benoit*, 2010 BCSC 130 at paras. 11-14.
- [10] The plaintiff points out that the list of documents was only provided at the 11th hour in response to this application and that, by definition, the document production was dilatory.
- [11] There is no evidence from the defendant personally. There is nothing that adequately explains the delay in producing a list of documents.
- [12] The plaintiff also argues that, with the new limits on examinations for discovery, he should not be forced to pursue document production issues through the examination for discovery process. As was stated in *NMH Holdings Limited. v. The Crestmark Developments Limited Partnership*, 2012 BCSC 2215:
- [56] The NMH Parties fully accept that the defendants, subject to questions of privilege, could pursue the adequacy of their document production at discovery. For the reasons I have described, I do not consider this option realistic or appropriate. Examinations for discovery are a vital part of the litigation process. The time constraints on examinations for discovery that were created by the new Rules were intended to increase efficiency and to limit the prospect of unnecessary discovery. They were not intended to impair a party's substantive rights.

- [13] The plaintiff also points out that the list provided by the defendant is inadequate in that there are documents that are clearly relevant that are omitted without explanation, in particular, bank statements for payments said to have been made by the defendant for prior sales of bitcoin from the plaintiff and the "User Agreement" the defendant says the plaintiff entered into.
- [14] The plaintiff submits that he should not be forced to continue to chase the defendant for clearly relevant documents. The Defendant
- [15] The defendant, in submissions of counsel by way of the application response, says that the delay in producing a list of documents was due to needing to obtain documents from a company that had ceased to exist and due to the COVID-19 emergency. There is, however, no evidence supporting that submission.
- [16] The defendant, in further submissions of counsel, says that he will produce certain bank statements containing any transactions with the plaintiff and that he has already produced "the terms of the User Agreement".
- [17] The defendant submits that there is nothing in the facts here requiring the censure implied in ordering an affidavit of documents. discussion
- [18] This is, by both parties' submission, not a complicated case. Procedural delays result in justice being delayed and promote inefficiencies in the judicial system. Parties are expected to take the time limits for production of documents seriously.
- [19] Absent good reason, the court is entitled to assume that a "dilatory and casual attitude to production of documents" was the cause for the delay here.
- [20] There is no evidence from the defendant, other than the submissions of his counsel by way of the application response, explaining the delay in production of the list of documents or the failure to list and produce documents that are clearly relevant.
- [21] That explanation, without evidence in support, is simply insufficient.
- [22] As a result, the plaintiff's application is allowed. The defendant will provide an affidavit verifying his list of documents within seven days of this order. costs
- [23] The plaintiff seeks costs in any event of the cause, however, I do not think this application rises to that level. The plaintiff will have his costs of this application in the cause. "Master Muir"

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