

CANADA / JUDGMENT

Ralph's Auto Supply (B.C.) Ltd. v. Ken Ransford Holding Ltd.

2020 BCCA 260

COURT

British Columbia Court of Appeal

DECIDED

24 September 2020

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2020 BCCA 260 Ralph's Auto Supply (B.C.) Ltd. v. Ken Ransford Holding Ltd. COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Ralph's Auto Supply (B.C.) Ltd. v. Ken Ransford Holding Ltd., 2020 BCCA 260 Date: 20200924 Docket: CA45952 Between: Ralph's Auto Supply (B.C.) Ltd. Appellant (Plaintiff) And Ken Ransford Holding Ltd. doing business as Kencor and Kenneth Gary Ransford Respondents (Defendants) Before: The Honourable Mr. Justice Willcock The Honourable Madam Justice Fenlon The Honourable Mr. Justice Hunter Supplementary Reasons to Ralph's Auto Supply (B.C.) Ltd. v. Ken Ransford Holdings Ltd., 2020 BCCA 120, Vancouver Docket CA45952. Counsel for the Appellant: H.S. Silber, Q.C. D.F. Hepburn Counsel for the Respondent: W.G. Wharton R.S. Bernard Place and Date of Hearing: Vancouver, British Columbia March 11, 2020 Place and Date of Judgment: Vancouver, British Columbia April 30, 2020 Written Submissions received: July 10, 31, August 5, 2020 Place and Date of Supplementary Judgment: Vancouver, British Columbia September 24, 2020 Supplementary Reasons of the Court Summary: Each party should bear their own costs of an appeal which contained two substantive issues, one of which was decided in favour of the appellant, and one of which was decided in favour of the respondents. Supplementary Reasons of the Court:

- [1] On April 30, 2020, this appeal was allowed in part, with reasons indexed at 2020 BCCA 120. The parties have been unable to agree on the disposition of costs. The respondents propose that each party bear their own costs of the appeal on the basis that there were two issues before the Court and success was divided. The appellant seeks an order that costs be payable to it as the successful party on what it characterized as the sole or dominant issue.
- [2] The appeal arose from a decision by a chambers judge dismissing the appellant's case against the respondents for want of prosecution, and directing that damages incurred by the respondents relating to a pre-trial injunction be assessed by the Registrar.
- [3] The appellant appealed both orders. The appeal in relation to the dismissal of its action for want of prosecution was dismissed. The appeal in relation to the assessment of damages arising from the pre-trial injunction was allowed.

- [4] A party who is successful on an appeal is normally entitled to its costs of the appeal: s. 23 of the Court of Appeal Act. Where success is divided, a party may still be entitled to costs if it achieves substantial success in the appeal: *Xu v. Chu*, 2020 BCCA 44 at para. 6. Determining whether either party was substantially successful on an appeal is a matter of judgment: *Reid v. Reid*, 2017 BCCA 191 at para. 11. When success is divided and no party enjoys substantial success, this Court's practice is normally to order that each party bear their own costs: *Marquez v. Zapiola*, 2014 BCCA 35 at para. 17.
- [5] The appellant submits that it enjoyed substantial success because the damages assessment was a much more significant issue than the dismissal of the action. It describes this issue as the "dominant issue that drove the two applications" that led to the judgment under appeal. The respondents submit that the primary issue on appeal was the dismissal of the appellant's action, without which there could not have been an assessment of damages caused by compliance with the injunction.
- [6] In this case, it does not appear to us that either of the two issues was of such relative importance that success on one could be characterized as substantial success in the appeal. Both issues were of importance. The appellant's success meant that it was no longer exposed to damages arising from the injunction. However, the respondents' success meant that they were no longer exposed to damages for the conduct which was the foundation of the lawsuit, and were entitled to the costs of the underlying action. In our view, this is an example of success being divided, without either party enjoying substantial success. Thus, neither party is entitled to their costs of the appeal.
- [7] For these reasons, each party will bear their own costs of the appeal. We make no order in relation to the disposition of costs in the Supreme Court of British Columbia. "The Honourable Mr. Justice Willcock" "The Honourable Madam Justice Fenlon" "The Honourable Mr. Justice Hunter"

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