

CANADA / JUDGMENT

Rana v. Nagra

2013 BCSC 184

COURT

Supreme Court of British Columbia

DECIDED

6 February 2013

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2013 BCSC 184 Rana v. Nagra

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Rana v. Nagra,

2013 BCSC 184

Date: 20130206

Docket: S90941

Registry: New Westminster

Between:

Joga Singh Rana, Karamjit Singh Rana,

Kashmir Kaur Rana

Plaintiffs

And

Harjinder Pal Singh Nagra, Paramjit Kaur Nagra

and 567055 B.C. Inc. (INC. NO. 567055)

Defendants

Before: The Honourable Madam Justice B.J. Brown

Reasons for Judgment re: Costs

Counsel for the plaintiffs:

S.K. Sheena-Nakai

Counsel for the defendants:

M. von Antal

Place and Date of Trial

New Westminster, B.C.

October 5 - 8; 14 - 16, 2009

Place and Date of Judgment:

New Westminster, B.C.

February 6, 2013

I. introduction

- [1] The defendants seek an award of special costs against the plaintiffs or, in the alternative, an order for increased costs as a percentage of special costs.
- [2] The defendants argue that the plaintiffs' conduct in these proceedings was reprehensible and constitutes misconduct such that the court should make an order of special costs against the plaintiffs. The defendants argue that the plaintiffs' claims for unjust enrichment and constructive trust were without evidentiary support and that the certificate of pending litigation filed against lands owned by 567055 B.C. Inc. were not filed for a proper purpose, but rather to cause loss, expense and inconvenience to the defendants. They also allege that the plaintiffs filed false or exaggerated affidavits in order to mislead the court and maintain the certificate of pending litigation, failed to disclose relevant documents, prejudicing the defendants' ability to assess and meet the plaintiffs' case, and wrongfully made unsubstantiated allegations of false or forged promissory notes and of misappropriation and conversion.
- [3] In response, the plaintiffs argue that the defendants are not entitled to special costs and that each party should bear its own costs of the proceeding, given that both the plaintiffs' claim and the defendants' counterclaim were dismissed.
- [4] The plaintiffs say that they filed the certificate of pending litigation against property owned by 567055 B.C. Inc. based on advice of their counsel and not for an improper purpose. They say that they acted in good faith in filing the certificate of pending litigation.
- [5] In addition, the plaintiffs say that they did not submit false, misleading or inaccurate affidavits. They also say that they were not remiss in disclosing certain documents and that in any event, failure to provide full or timely discovery of documents does not necessarily result in an award of special costs. Rather, it depends on factors such as the effect of non-disclosure on the litigation, the degree of non-compliance, and the motives behind the failure to make disclosure.

- [6] Joga Rana says that he was acting in good faith in defending the counterclaim and that he has no memory of signing the promissory notes.
- [7] The plaintiffs further say that an unwarranted allegation of fraud or dishonesty will not always attract an award of special costs. It is only where a plaintiff knew or ought to have known that there was no reasonable basis on which to pursue claims of fraud that the court ought to chastise the plaintiff with an award of special costs against it. Here, the plaintiffs say that they acted in good faith in proceeding with their claims and in defending against the counterclaim, relying on the advice and guidance of their counsel. They say that there was a *prima facie* basis for them to defend the counterclaim in the manner that they did and to proceed with the allegation that the defendants had used funds that belonged to the companies.
- [8] With respect to the counterclaim, as it relates to costs, the plaintiffs say that because the counterclaim was dismissed, the parties should each bear their own costs. Referring to *Trinh v. Chan*, [1998] B.C.J. No. 720 (S.C.), the plaintiffs argue that where a significant amount of court time is consumed by the counterclaim on which the defendant failed, there is a basis for departing from the general rule that a defendant ought to bear only the amount by which the costs of the proceedings were increased by the counterclaim. The plaintiffs say that the counterclaim raised discrete issues not incidental to the defence and that it took a significant period of trial time to deal with those issues. They say that neither they nor the defendants obtained substantial success in the whole proceeding and, as a result, the court should order that each bear their own costs.

II. law

A. Party-Party Costs

- [9] In the recent decision of *Bradshaw v. Stenner*, 2012 BCSC 237 at para. 6, leave to appeal ref'd 2012 BCCA 481, Madam Justice Dillon succinctly summarized the law with respect to awarding party and party costs:
- [6] Rule 14-1(9) incorporates the long established rule (previously Rule 57(9)) that costs follow the event so that the successful party recovers costs unless the court otherwise orders. The winning party is entitled to a general award of costs of the action if he or she "substantially succeeded" on the event (*Gold v. Gold* (1993), 82 B.C.L.R. (2d) 180 at paras. 21-22 (C.A.); *Fotheringham v. Fotheringham*, 2001 BCSC 1321 at paras. 45-46, leave to appeal to C.A. refused, 2002 BCCA 454 (*Fotheringham*); *Allnorth Consultants Limited v. Tercon Construction Ltd.*, 2010 BCSC 451 at para. 9). In *Fotheringham* at para. 46, this Court identified a four step inquiry that a court might follow to determine whether to award costs. That inquiry is:
1. First, by focusing on the "matters in dispute" at the trial. These may or may not include "issues" explicitly mentioned in the pleadings.

2. Second, by assessing the weight or importance of those "matters" to the parties.
3. Third, by doing a global determination with respect to all the matters in dispute and determining which party "substantially succeeded," overall and therefore won the event.
4. Fourth, where one party "substantially succeeded," a consideration of whether there are reasons to "otherwise order" that the winning party be deprived of his or her costs and each side then bear their own costs.

B. Special Costs

- [10] Rule 14-1(1)(b) of the Supreme Court Civil Rules requires that costs be assessed in accordance with Appendix B unless the court orders that the costs of the proceedings or of a step in the proceedings be assessed as special costs.
- [11] Special costs are punitive in nature and encompass an element of deterrence. They are ordered to chastise or punish a litigant who has engaged in reprehensible conduct. The concept of reprehensible conduct has been given a relatively broad definition, as explained by Lambert J.A. in *Garcia v. Crestbrook Forest Industries Ltd.* (1994), 9 B.C.L.R. (3d) 242 (C.A) at 249:
- [17] ...it is my opinion that the single standard for the awarding of special costs is that the conduct in question properly be categorized as "reprehensible". As Chief Justice Esson said in *Leung v. Leung*, the word reprehensible is a word of wide meaning. It encompasses scandalous or outrageous conduct but it also encompasses milder forms of misconduct deserving of reproof or rebuke. Accordingly, the standard represented by the word reprehensible, taken in that sense, must represent a general and all-encompassing expression of the applicable standard for the award of special costs.
- [12] Special costs can be awarded on the basis that a party's claims lacked legal merit: *Morriss v. Prism Properties Inc.*, 2010 BCSC 454 at paras. 84-85. More specifically and with particular application to the facts in this case, in the recent decision of *Abakhan & Associates Inc. v. Golden Arch Resources Ltd.*, 2012 BCSC 346 at paras. 7-8, Madam Justice Ballance explained that although it remains a context-driven determination, courts will more readily award special costs where there are failed allegations of fraud and similar corrupt conduct:
- [7] A failed allegation of fraud, deceit, dishonesty and similar corrupt conduct in a civil law suit will more readily justify an award of special costs against the maker than will other types of unproven allegations: *Stenner v. ScotiaMcLeod*, 2009 BCSC 1348, 2009 CarswellBC 2640 (S.C.). However, the one does not automatically follow the other. The purpose of special costs is to chastise a spectrum of misconduct that the court considers to be reprehensible or otherwise deserving of judicial rebuke: *Mayer v. Osborne Contracting Ltd.* 2011 BCSC 914. Whether unfounded accusations of fraud are sufficiently reprehensible or otherwise warrant the court's condemnation through costs depends on the particular circumstances: 307527 B.C. Ltd. v. Langley, 2005 BCCA 161.

- [8] Among other factors, the court will examine whether the accuser had a genuine belief in the truth of the allegations made, or whether the allegation was obviously unfounded from the accuser's standpoint: *Bank of Credit & Commerce International (Overseas) Ltd. (Liquidators of) v. Akbar*, 2001 BCCA 204, 86 B.C.L.R. (3d) 312, 3 C.P.C. (5th) 1, 2001 CarswellBC 532 (C.A.); *Mawdsley v Meshen*, 2011 BCSC 923. Where the court is satisfied there was a reasonable basis to make the allegation, the party who unsuccessfully advanced that claim may avoid an award of special costs: *Neilson v. Lam*, 2011 BCSC 1282 at para. 5. The corollary is if the accuser had access to information sufficient to reasonably conclude that the other party was not acting in a fraudulent or otherwise dishonest manner, special costs may well be appropriate: *Johal v. Viridi*, 2011 BCCA 412; *Hamilton v. Open Window Bakery Ltd.*, 2004 SCC 9. An important consideration in the overall picture is the effect the allegation has on the other party's reputation: *Bronson v. Hewitt*, 2011 BCSC 102; *Pacific Hunter Resources Inc. v. Moss Management Inc.*, 2009 BCSC 1049.

See also *Bradshaw v. Stenner* at paras. 9-11.

- [13] Furthermore, courts have relied on non-disclosure of relevant documents as a basis for awarding special costs. In this regard, in support of their position, the defendants refer to *Laface v. McWilliams*, 2005 BCSC 1766, a case in which Kirkpatrick J. (as she then was) found that one of the defendants had failed to produce investigative reports, employment records and written hotel policies that went to the core of the allegations against it. The plaintiff and the court learned of the existence of the documents only when one of the witnesses mentioned them in his evidence at trial. In those circumstances, she held that the failure to disclose critical documents, standing alone, warranted an award of special costs, stating that the defendant's conduct, at best, demonstrated "foolhardy recklessness" and was deserving of reproof: paras. 38-39.
- [14] In *Skadberg Construction Ltd. v. Buchholz*, 2010 BCSC 869 at paras. 75-76, referring to the judgment from *Laface*, Gropper J. similarly awarded special costs because the defendant failed to disclose information of which she was aware and provided "absolutely no evidentiary basis" to prove her counterclaim in fraud. See also *Genesee Enterprises v. Rached*, 2001 BCSC 1172 at paras. 14-16; *XY, Inc. v. International Newtech Development Incorporated*, 2012 BCSC 319 at paras. 355-362.

III. Discussion

A. Party-Party Costs

- [15] The Rana family started this action against the Nagra family and 567055 B.C. Inc., alleging that they were due substantial sums of money from the defendants. After hearing the trial of this matter over 15 days, I reached the conclusion that it was unlikely that anything more was due to the plaintiffs than they had been paid. At para. 40 of my reasons for judgment, indexed at 2010 BCSC 535, I stated:

- [40] ...this trial provided the Ranases with the opportunity to establish the amount due to them. ... After hearing all of the evidence, I am not satisfied that there is more due to the plaintiffs than that which they have already been paid.
- [16] Moreover, as I noted at para. 41, the plaintiffs advanced their case on the basis that they had been deceived in various ways by Mr. Nagra:
- [41] ...the plaintiffs advanced their case on the basis that they were innocents, duped by Mr. Nagra to make advances, relying entirely on him and not knowing how much they invested or how much was due to them. I do not accept this evidence. The Ranases each gave evidence. They are not so innocent or naive that they did not know how much they had invested and when. Had they wished to do so, it would have been possible to put together a coherent accounting so that the court could grant judgment to the Ranases for any amount remaining due. They did not do so.
- [17] It was in the context of this overall claim that the defendants introduced evidence of monies owing to them from the plaintiffs and it was in that context that I dismissed the counterclaim, concluding at para. 51:
- [51] As I have indicated, the finances of these parties are a mare's nest. I am not satisfied that these amounts are outstanding and are not satisfied in some other manner in one or more of the other dealings between these parties. ...
- [18] I was not satisfied, after having heard all of the evidence of monies moved to and fro between the parties, that there was anything more due to the plaintiffs than the \$70,000 that had already been paid to them. Very little time was spent on the counterclaim, which was advanced only as part of the overall accounting between the parties.
- [19] In my view, the litigation was misguided. As I indicated in my reasons for judgment, Mr. Nagra had tried at various times to resolve the accounting between the parties and to adjust the accounts as contemplated by the adjustment clause in the agreement. The plaintiffs resisted Mr. Nagra's attempts to resolve the accounts, and instead elected to file certificates of pending litigation and pursue the matter through litigation.
- [20] In my view, the defendants were substantially successful in this litigation and are entitled to their costs.

B. Special Costs

- [21] The remaining question then is whether the defendants are entitled to special costs. In my view, this should be answered in the affirmative. It is appropriate in these circumstances to award the defendants special costs of the action, as the conduct of the plaintiffs was reprehensible and deserving of rebuke.

- [22] First, they filed certificates of pending litigation against the property owned by 567055 B.C. Inc., although their case did not actually involve a claim against the assets of the numbered company. Rather, their case was that the defendants owed them money for their shares in 567055 B.C. Inc. Accordingly, their claim would not justify filing a certificate of pending litigation against real property owned by 567055 B.C. Inc. In my view, as I indicated in my earlier reasons, the plaintiffs inappropriately used certificates of pending litigation, unsupported by their true claims, to put pressure on the defendants. They repeatedly opposed the defendants' efforts to remove the certificates, relying on affidavits of Mr. Rana in which he: (i) falsely stated that the defendants had converted funds belonging to 567055 B.C. Inc.; (ii) on several occasions, exaggerated the amounts he believed that the defendants owed to the plaintiffs; and (iii) falsely stated that he was owed further monies for the sale of ASAP Bindery Services Ltd. on the basis that he was misled as to the amount the company had been sold for.
- [23] Second, in addition to pursuing unmeritorious claims, the plaintiffs were unable to produce any evidence to support their claim that promissory notes were forged or falsified and that the defendants converted to their own use or otherwise misappropriated an unspecified significant sum of money from the various companies. There was no evidential foundation whatever to support these contentions.
- [24] Finally, the plaintiffs failed to produce relevant documents in a timely manner, prejudicing the defendants' ability to meet the case brought against them.
- [25] These four factors combined — that is, pursuing doubtful and unmeritorious claims to put pressure on the defendants; providing false, exaggerated or misleading sworn evidence; making serious allegations of fraud and misappropriation without producing any evidence to support them; and failing to produce documentation relevant to their claims — justify an award of special costs.
- [26] If the parties are not able to agree on costs, they may have costs assessed before the Registrar.

"B.J. Brown J."

The Honourable Madam Justice B.J. Brown

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/SC/13/01/2013BCSC0184.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/rana-v-nagra-2013>

Prepared on 29 October 2026 · Esheria