

CANADA / JUDGMENT

# Rassaf v. Borden Ladner Gervais

2015 BCSC 2413

## COURT

Supreme Court of British Columbia

## DECIDED

1 December 2015

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

2015 BCSC 2413 Rassaf v. Borden Ladner Gervais IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Rassaf v. Borden Ladner Gervais, 2015 BCSC 2413 Date: 20151201 Docket: S157718 Registry: Vancouver Between: Houshang Rassaf Plaintiff And Borden Ladner Gervais and Steve Winder Defendants Before: The Honourable Madam Justice Maisonville Oral Reasons for Judgment In Chambers Plaintiff: No appearance Counsel for the Defendants: A. Leoni Place and Date of Hearing: Vancouver, B.C. December 1, 2015 Place and Date of Judgment: Vancouver, B.C. December 1, 2015

## introduction

- [1] The defendants, Borden Ladner Gervais, a law firm, and Steve Winder, counsel at the firm, bring an application on three grounds.
- [2] Pursuant to Rule 9-5 of the Supreme Court Civil Rules, B.C. Reg. 168/2009, the defendants seek that the action against them be struck and dismissed.
- [3] Alternatively, they seek dismissal of this matter pursuant to Rule 9-7 of the Rules.
- [4] The defendants also seek, pursuant to s. 18 of the Supreme Court Act, R.S.B.C. 1996, c. 443, that the plaintiff, Mr. Rassaf be enjoined from instituting any legal proceedings in the Provincial Court of British Columbia or the Supreme Court of British Columbia arising out of, or in any way, connected with the herein claim of the Vancouver Registry Action S157718 or the Vancouver Registry Action S083896 ("the S083896 action") described below.

## analysis

- [5] The S083896 action is an underlying action in which the plaintiff, Mr. Rassaf had sought damages for wrongful dismissal against the defendant, SNC-Lavalin Engineers & Constructors Inc.
- [6] In the S083896 action, Mr. Winder, counsel at Borden Ladner Gervais, acted as counsel for SNC-Lavalin Engineers & Constructors Inc.

- [7] The pleadings of Mr. Rassaf in the S083896 action were struck on April 17, 2013 by Mr. Justice Bowden due to his failing to comply with the Rules by failing to attend an examination for discovery.
- [8] An appeal was filed but was dismissed as abandoned on October 15, 2013. Mr. Rassaf sought to reactivate the appeal twice, and twice his application was dismissed.
- [9] On September 22, 2015, Mr. Rassaf brought a Notice of Civil Claim against Mr. Winder and Borden Ladner Gervais claiming, inter alia, that: Mr. Winder has no respect for [the] Rules of Court and laws and does not honour his signature on the order of the Court (he breached our agreement and he is liable to compensate the Plaintiff) and his law firm has been through disruption of the Plaintiff lawsuit since 2008 in bringing frivolous applications to mislead the officials of the Court due to the fact that they know they can't win.
- [10] At paragraph 6 of the Notice of Civil Claim, Mr. Winder is alleged to have: [tampered, manipulated the plaintiff's file,] court documents and other court documents as he claims that he used to work as a law clerk for 6 justices of the BC Supreme Court and as such he can do anything he wants and he has been continuously abusing the process of the Court.
- [11] The claim continues in this vein.
- [12] The relief sought includes:
1. Professional negligence causing malicious defamation [seeking] \$350,000.
  2. Professional negligence causing losses of \$165,000 per year since September 2007.
  3. Professional negligence causing punitive damages and aggravated damages (intimidation, threats, stress, mental distress, anxiety, depression, aggravation of medical condition of diabetes and hypertension, etc.) of \$350,000.
- [13] This matter came before Mr. Justice Abrioux of this Court on November 27, 2015. Mr. Rassaf had advised the Registry that he was unable to attend as he was ill. The matter was adjourned to today's date to be heard on a peremptory basis. Mr. Rassaf has not attended today's application although duly served. He has been paged and is not in attendance.
- [14] I am satisfied, on the basis of the materials that have been put to the Court, that the claim is baseless and is not found on a cause of action known in law. There is no duty owed by Borden Ladner Gervais or Mr. Winder to Mr. Rassaf. Instead, any duty owed in such a situation is of Mr. Rassaf to defence counsel, the Court and Mr. Winder's client.
- [15] I have been provided with extensive case law in that regard.
- [16] No fiduciary duty exists between a solicitor to an adverse party - there is no duty of care: see *Young v. Borzoni*, 2007 BCCA 16 at paras. 51 and 52 where Thackray J.A. quoted from the decision *Crooks v. Manolescu*, [1995] B.C.J. No. 17 (S.C.):

- [51] The circumstances in *Crooks v. Manolescu*, [1995] B.C.J. No. 17 (S.C.) are closely analogous to the case at bar. Solicitor A was alleged to have assisted a client to falsely shield assets from execution. In an action brought on behalf of persons said to have been defrauded, solicitor A was named as a defendant. Solicitor B acted for solicitor A and it was submitted that she owed to the plaintiffs "a fiduciary duty and a duty to take care in respect of the plaintiffs' interests." The allegations against her included failing to warn the plaintiffs of fraudulent acts by her client and continuing to act in circumstances where she ought to have known of fraudulent activity.
- [52] An application was brought to strike out portions of the statement of claim as disclosing no reasonable claim. In a well written judgment Master Bolton said:
- [8] The existence of a fiduciary duty or duty of care is not an allegation of fact, however, but a conclusion of law which must depend on proof (or for present purposes, allegations) of fact. And particulars of the breach of a duty are not relevant to the question of the existence of the duty. Thus, while I accept as a fact, for example, for the purposes of this hearing, that [solicitor B] filed affidavits which she ought to have known were false, that fact is of absolutely no significance to the question of the existence of a duty of care to the plaintiffs.
- [10] the plaintiff's position is tantamount to an assertion that all counsel who represent litigants owe a fiduciary duty or a duty of care to the other party to the litigation. This is patently absurd, as in the course of counsel's representation of her own client, much may be done that is intentionally and necessarily directed toward injuring the opposing party's interests. On the facts as pleaded here, it is, to borrow the emphatic language of Taylor J.A. in *Kamahap Enterprises Ltd. v. Chu's Central Market Ltd.* (1990), 40 B.C.L.R. (2d) 288, impossible that [solicitor B] could owe a duty of care to Ms. Crooks.
- [11] The impossibility arises out of the very nature of a solicitor's duty to her own client. ...
- [12] The impossibility of the existence of a duty of care that I referred to in paragraph 10 above is an impossibility on these pleadings. Clearly, a solicitor will in some circumstances be held to owe a duty to persons other than her own client, and so may be a barrister. I do not intend to say that [solicitor B] could in no circumstances be held to owe a duty of care to Ms. Crooks. But I do say that before such a duty can be found to exist, facts must be proved in evidence - and alleged in pleadings - which describe the relationship and the circumstances from which the duty arose. Master Bolton then cited case authorities as to the basis for the imposition of a duty of care. He concluded as follows:
- [15] It is not for me to speculate about what additional facts would support the existence of a duty of care in the case now before me. All that I can say is that on the facts as presently pleaded, no such duty could possibly be held to exist; the impugned paragraphs disclose no reasonable cause of action.
- [17] As well, in *Martel v. Andrew*, 2005 ABCA 63 at para. 12, the court held:

- [12] the duty to the court is a public duty and owed as an officer of the court to the court and not a private duty owed to the opposite side in the lawsuit. There is ample authority that the duties that a lawyer owes to the opposing party are viewed very restrictively: *German v. Major* (1985), 62 A.R. 2 (C.A.). There are good policy reasons for this in the adversarial system. If it were otherwise, the conflicting duties owed by a lawyer would make the adversarial system impossible.
- [18] In respect of the second matter, that Mr. Rassaf be enjoined from commencing any proceedings in this S157718 action without leave of the Court, it is important to note, and I stress, that there is an existing order in place which to counsel's knowledge has not been displaced, and that is an order of Madam Justice Loo dated September 22, 2003 with respect to the Vancouver Registry Action S031832 between the plaintiff, Mr. Rassaf and the defendants, Casey Anderson, Grant Ritchey, Kirk Huxley, ICBC Special Investigation Unit, Jeff Baragar and Quinlan Abrioux. The S031832 action was struck and pursuant to s. 18 of the Supreme Court Act, it was ordered by Loo J. that Mr. Rassaf may not commence any legal proceedings without first having obtained the leave of this Court to do so.
- [19] I note that Loo J.'s order is still in effect. In addition, there will be a further order, but in no way displacing that existing order that, in this action, the Court grants the order pursuant to s. 18 of the Supreme Court Act that the plaintiff be enjoined from instituting any legal proceedings in the Provincial Court of British Columbia or the Supreme Court of British Columbia arising out of, or in any way, connected with the subject matter herein claimed and/or the S083896 action, including the conduct of adverse parties, their solicitors, and the Court in the above noted proceedings, without having first obtained leave of this Court.
- [20] Additionally, the defendants seek an order of special costs to be assessed. I am mindful that an order of special costs follows on reprehensible conduct.
- [21] The Notice of Civil Claim discloses matters that are groundless and, in addition to being groundless, I find the actions of Mr. Rassaf to be reprehensible. There is absolutely no basis for them. They are inflammatory and they falsify matter. They subject an Officer of the Court on a groundless basis to non-existent duties and seek damages.
- [22] Accordingly, there will be an order for special costs to be assessed by Registrar of this Court. "Maisonville J."

## 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/15/24/2015BCSC2413.htm>

**CASE PAGE**              <https://chat.esheria.ai/case-law/canada/rassaf-v-borden-ladner-gervais-2015>

Prepared on 29 October 2026 · Esheria