

CANADA / JUDGMENT

Red Branch Investments Limited v. Long

2025 BCSC 468

COURT

Supreme Court of British Columbia

DECIDED

18 March 2025

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2025 BCSC 468 Red Branch Investments Limited v. Long IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Red Branch Investments Limited v. Long, 2025 BCSC 468 Date: 20250318 Docket: S187807 Registry: Vancouver Between: Red Branch Investments Limited and Gerald Wright Plaintiffs And David P. Long Defendant Before: The Honourable Justice Basran Supplemental Reasons for Judgment Re: Costs Counsel for the Plaintiffs: P.J. Sullivan O. Ahmed P. Parihar Counsel for the Defendant: H.C.R. Clark, K.C. Place and Date of Hearing: Vancouver, B.C. December 2, 2024 Written Submissions of the Plaintiffs: December 10, 2024 Written Submissions of the Defendant: December 17, 2024 Reply Written Submissions of the Plaintiffs: December 20, 2024 Place and Date of Judgment: Vancouver, B.C. March 18, 2025 Table of Contents Introduction.. 3 Does the Finding that Mr. Long Perjured Himself Justify Setting Aside the Costs Decision?. 4 Legal Principles. 4 Positions of the Parties. 5 Factual Findings. 6 Discussion. 6 Does Mr. Long's Misconduct Disentitle him to Costs of the First and Second Trials?. 7 Conclusion.. 8

Introduction

- [1] Gerald Wright and a company he owns and controls, Red Branch Investments Limited ("Red Branch"), are the plaintiffs in this action, which was commenced on July 13, 2018. The plaintiffs request that this court set aside the decision of a trial held in 2015 before Justice Wong (the "First Trial") and order a new trial. The decision from the First Trial is indexed as Long v. Red Branch Investments Limited, 2015 BCSC 2192 (the "First Trial Decision").
- [2] In a separate decision, indexed as Long v. Red Branch Investments Limited, 2016 BCSC 274 (the "Costs Decision"), Wong J. ordered special costs against the plaintiffs on a joint and several basis. In so deciding, Wong J. found that Mr. Wright's conduct was reprehensible before and during the trial and was deserving of rebuke because he:
- reneged on his gift of a royalty interest to Mr. Long;
 - protracted the litigation by casting unfounded character aspersions against Mr. Long; and
 - advanced a self-serving narrative, meritless defence, and obfuscated the issues. Costs Decision at paras. 5-7.

- [3] The plaintiffs request that the First Trial Decision be set aside on the basis that the defendant, Mr. Long, perpetrated a fraud on the court by perjuring himself during the First Trial. The trial of this action was heard before me during April and May 2024 (the "Second Trial").
- [4] On August 28, 2024, I issued reasons for judgment, indexed as Red Branch Investments Limited v. Long, 2024 BCSC 1588 (the "Second Trial Decision"). I found that Mr. Long deliberately misled the court and perjured himself, but that this was not material to the outcome of the First Trial because there was ample other evidence to support Wong J.'s decision.
- [5] I therefore dismissed the plaintiffs' application to set aside the First Trial Decision and the Costs Decision and, accordingly, I did not order a new trial: Second Trial Decision at para. 110.
- [6] However, Red Branch's closing submissions during the Second Trial sought leave to make further submissions on the issue of setting aside Wong J.'s Costs Decision. The rationale for this request was that Red Branch sought the benefit of my reasons related to setting aside the First Trial Decision before making further submissions on the Costs Decision.
- [7] I inadvertently missed the plaintiffs' request for leave to make further submissions on the issue of setting aside the Costs Decision. On December 2, 2024, the parties made oral submissions and provided written submissions on the Costs Decision and the issue of costs in respect of the Second Trial. The plaintiffs and defendant provided further written submissions on December 10, 2024, and December 17, 2024, respectively. The plaintiffs submitted further reply submissions on December 20, 2024.
- [8] The formal order in respect of the Second Trial has not been entered, therefore, I continue to have jurisdiction over the Costs Decision matter. In my view, it is appropriate that I consider the plaintiffs' submissions on setting aside the Costs Decision and provide supplementary reasons on this issue as well as the issue of costs in respect of the Second Trial. These are those reasons. These reasons replace paras. 110–112 of the Second Trial Decision. Does the Finding that Mr. Long Perjured Himself Justify Setting Aside the Costs Decision? Legal Principles
- [9] A successful party may seek special costs: Supreme Court Civil Rules, s. 14-1(3).
- [10] Awarding special costs is appropriate when a party has engaged in "reprehensible" litigation conduct. This includes scandalous or outrageous conduct but also encompasses milder forms of misconduct "deserving of reproof or rebuke": *Garcia v. Crestbroo* (1994), 119 D.L.R. (4th) 740, 1994 CanLII 2570 (B.C.C.A.) at para. 17.
- [11] The court must exercise restraint in ordering special costs and the party seeking an order of special costs must demonstrate exceptional circumstances to justify such an order: *Westsea Construction Ltd. v. 0759553 B.C. Ltd.*, 2013 BCSC 1352 at para. 73.

- [12] The misconduct of a successful party may disentitle them to an award of costs: *Luu v. Wang*, 2012 BCSC 626 at paras. 46 and 61.
- [13] Providing false evidence at trial that is knowingly untrue is a grave matter: *Brown v. Lowe*, 2002 BCCA 7 at para. 149.
- [14] Calculated deceit under oath demands chastisement by the court because such conduct is "disdainful of the judicial process and is aimed at undermining it": *Cardwell v. Perthen*, 2007 BCSC 366 at para. 13.
- [15] It is the deceit itself, not the consequences of the deceit, that deserve chastisement from the court. The importance of the deceptive evidence to the outcome of the proceedings, or whether the deceit protracted the trial, is immaterial in the costs analysis: *A.D.J. v. F.J.*, 2022 BCSC 1974 at para. 79.
- [16] Misleading the court without consequences brings the administration of justice into disrepute: *Royal Bank of Canada v. Azkia*, 2019 ONSC 5894 at para. 83. Positions of the Parties
- [17] The plaintiffs submit that I retain jurisdiction over the Costs Decision because a formal order has not been entered in respect of the Second Trial. They assert that there is nothing improper about providing supplemental reasons to the Second Trial Decision in respect of the issue of costs because they are sought by one of the parties while I retain jurisdiction over this matter.
- [18] On the substantive issue, the plaintiffs assert that Mr. Long's perjury disentitles him from a costs award in both the First Trial and the Second Trial. They seek to set aside the Costs Decision and assert that each party should bear their own costs for both the First Trial and the Second Trial.
- [19] Mr. Long agrees that I have the jurisdiction to re-open this matter, but he suggests that this application ought to be decided in the British Columbia Court of Appeal because the plaintiffs have appealed the Second Trial Decision to that court. On the substantive issue, Mr. Long submits that his perjury was not material to the Costs Decision, and that the Costs Decision should be upheld. He further submits that as the successful party, he is entitled to the costs of the Second Trial, and that the scale should be special costs. Factual Findings
- [20] Prior to the First Trial, Mr. John Darch, a former friend and employer of Mr. Long, and a former friend and business associate of Mr. Wright, provided Mr. Long with strategic and tactical litigation advice: Second Trial Decision at para. 67.
- [21] During the First Trial, Mr. Long denied that he and Mr. Darch had discussed the litigation. This was a clear attempt to mislead the court. Mr. Long did not forget or accidentally fail to disclose his discussions with Mr. Darch about the litigation prior to the First Trial. Mr. Long sought to deliberately minimize Mr. Darch's involvement: Second Trial Decision at para. 68.

- [22] Mr. Long gave perjured evidence about Mr. Darch's involvement in the litigation: Second Trial Decision at paras. 69 and 103. Discussion
- [23] Mr. Long perjured himself and provided an unsatisfactory explanation for doing so. He intended to mislead the court about Mr. Darch's involvement in the preparation of his legal case.
- [24] Justice Wong was not aware that Mr. Long engaged in misconduct during the First Trial by knowingly providing false testimony and, thus, perjuring himself. In so doing, Mr. Long demonstrated disdain for the judicial process and sought to undermine it to suit his objectives.
- [25] The evidence of Mr. Darch's input and advice to Mr. Long in respect of the ongoing litigation was not material to Wong J.'s First Trial Decision. However, in considering costs, the importance or materiality of the deceptive evidence is not relevant. It is the deceit itself that requires chastisement. Deliberately misleading the court demands consequences, otherwise, the administration of justice is brought into disrepute.
- [26] In my view, it is unlikely that Wong J. would have ordered special costs if he had known of Mr. Long's perjury. Special costs are awarded in exceptional circumstances, which cannot possibly include circumstances where the successful party seeking special costs provided perjured testimony. Does Mr. Long's Misconduct Disentitle him to Costs of the First and Second Trials?
- [27] The costs of a proceeding must be awarded to the successful party unless the court otherwise orders: Supreme Court Civil Rules, s. 14-1(9).
- [28] Mr. Wright alleged that he did not transfer a 50% interest in the royalty to Mr. Long but that he merely transferred it to Mr. Long to hold for him. Justice Wong found this assertion to be totally false. Accordingly, the genesis of this litigation is based on Mr. Wright's entirely dishonest characterization of the royalty interest he gave to Mr. Long. Justice Wong concluded that Mr. Wright fraudulently attempted to deprive Mr. Long of this royalty interest.
- [29] Justice Wong completely rejected Mr. Wright's evidence during the First Trial and, as a result, Mr. Long was the successful party in that trial. I have concluded that Mr. Long's perjury during the First Trial disentitles him to special costs; however, I am not prepared to conclude that Mr. Long is not at all entitled to costs. This matter proceeded to court because of Mr. Wright's entirely unsubstantiated and ultimately dismissed fraudulent allegations against Mr. Long.
- [30] In my view, given that Mr. Wright's deceit was the only reason there was a trial, I find that Mr. Long is entitled to costs of both the First Trial and Second Trial, as the successful party.

- [31] Had Mr. Long not perjured himself during the First Trial and then minimized the extent of this perjury during the Second Trial, he would have retained the award of special costs in the First Trial, and may have been awarded special costs in respect of the Second Trial.
- [32] Taking into consideration the nature of the unsubstantiated allegations brought forward by the plaintiffs, the length and complexity of the proceedings, the perjured evidence of Mr. Long, and his resulting disentitlement to special costs in the First Trial, I am satisfied that the most appropriate outcome is that Mr. Long be entitled to his costs for both the First Trial and the Second Trial.

Conclusion

- [33] Mr. Wright's and Red Branch's application to set aside the First Trial Decision is dismissed.
- [34] The Costs Decision is set aside and replaced with an order that Mr. Long is entitled to costs of the First Trial and the Second Trial at Scale B. "Basran J."

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