

CANADA / JUDGMENT

Redekop v. Partridge & Other

2006 BCSC 1878

COURT

Supreme Court of British Columbia

DECIDED

18 December 2006

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2006BCSC1878 IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Redekop v. Partridge & Other, 2006 BCSC 1878 Date: 20061218 Docket: S06 28050 Registry: Prince George Between: Richard Brian Redekop Plaintiff And Steven Andrew Partridge and Armstrong Crane and Rigging Inc. Defendants Before: Master Baker Reasons for Judgment In Chambers Appearing for the plaintiff: Richard Redekop, In Person Counsel for the defendant Partridge: R. Duhra Date and Place of Hearing: December 4, 2006 Prince George, B.C. ISSUE

[1] Mr. Redekop and Mr. Partridge, until last summer, had some form of tenant and landlord (respectively) relationship. I say "some form" because the exact nature and requirements of the relationship depend upon whose version of the facts one accepts. In any event, Mr. Redekop's claims arose during that relationship and, basically, he wants damages. There is more to it than that, of course, as will be explained below. But more specifically, Mr. Redekop's motion seeks:

1. Summary judgment under Rule 18;
2. Payment to him of \$1,250.00, with costs, from funds currently held in court;
3. A reversal, in part, of an order made October 23 [sic], 2006;
4. Costs.

BACKGROUND

[2] Mr. Partridge, who lives in Nova Scotia, used to own a house in Winfield, British Columbia, which he rented out. That is, in my view, about the end of the agreed facts. Everything else is in contention. The parties do not agree whether Mr. Redekop was Mr. Partridge's tenant, or a sub-lessee of an earlier tenant. They do not agree as to the arrangements by which Mr. Redekop built and removed a fence on the property, and who should (or had undertaken to) pay for it. They do not agree as to whether or not the tenancy was terminated at the end of June, 2006 (with notice, as Mr. Redekop says) or later (by abandonment, as Mr. Partridge says). They do not agree on whether Mr. Partridge gave Mr. Redekop permission to leave two large storage containers, with practically all of Mr. Redekop's possessions in them, on the property after he ceased living there.

- [3] In the end, with Mr. Redekop having left the residence, Mr. Partridge had Armstrong Crane and Rigging Ltd. ("Armstrong") remove and store the containers. Mr. Redekop then approached the Residential Tenancy Branch, he says, to make a claim. Apparently he advised the Branch's representative that the value of the containers and his possessions, taken together with his costs for constructing the fence, exceeded \$25,000.00. He was then told that section 58(2)(a) of the Residential Tenancy Act[1] precluded the Branch taking jurisdiction, and that he would have to make his claim in this court. He therefore began proceedings and filed a claim of pending litigation ("CPL") against title to the home, based on sums owed him, he said, for the fence.
- [4] In September/October Mr. Partridge had arranged to sell the home. The CPL, of course, was a problem. Mr. Duhra, as agent for Mr. Partridge's British Columbia solicitor, appeared before Master Bolton October 10th and obtained an order:
- a) Removing the CPL from title;
 - b) Paying \$2,000.00 from the sale proceeds into court;
 - c) Granting liberty to apply to vary the order;
 - d) Granting costs against Mr. Redekop in any event of the cause. Mr. Redekop did not appear. He did not know of the court proceedings until 12:15 p.m. that afternoon, when he checked his cell phone voice messages, and discovered that a message had been left at 10:50 a.m. advising him of the application. The court is in Prince George and Mr. Redekop was in Vanderhoof, about 100 kms. away, so he immediately telephoned the court but was told that the matter had already been heard.
- [5] Mr. Redekop almost immediately began attempts to deal with the October 10th order and the issues at large. Very quickly it was agreed all around that the containers should be released to him, without costs to Armstrong, leaving only the issues between him and Mr. Partridge. Those present issues, re-cast from Mr. Redekop's motion, would be:
1. Is this court, as opposed to the Residential Tenancy Branch, the correct venue to resolve this dispute?
 2. Is Mr. Redekop entitled to judgment under Rule 18?
 3. Is Mr. Redekop entitled to a portion of the \$2,000.00 remaining with the court?
 4. Should the court reverse Master Bolton's October 10th order against Mr. Redekop for "costs in any event of the cause"? VENUE
- [6] I think that Mr. Redekop, as his claim was originally cast, had to bring his claim in this court. If, in fact, his containers and their contents, together with his other claims (in particular the cost of the fence and perhaps damages, as he claims, for removal and retention of his property) total more than \$25,000.00, then the Act clearly precludes his claim being heard by the Residential Tenancy Branch. He cannot be faulted for commencing

the proceedings in this court, despite the fact that, by the return of his property and containers, his claim almost certainly was reduced to an amount less than \$25,000.00. The real question would be - What now? It is possible that the matter could be referred back to the Branch for arbitration, as Mr. Redekop, at para. 25 of his statement of claim, specifically pleads and relies upon the Act. On the other hand, his claims are clearly based on an alleged contract for the construction of a fence which, if proven, probably does not rely on any landlord/tenant relationship. Further, he originally sought damages and return of his containers and possessions in detinue, claims in law, again, that can proceed independent of any landlord/tenant relationship. My point is that Mr. Redekop's main (if not all) claims do not really rely on any alleged landlord/tenant relationship with Mr. Partridge.

- [7] Section 15 of the Supreme Court Act[2] provides for the transfer of proceedings from this court to the Provincial Court. Several cases of this court[3] have encouraged transfer. This case would seem to be one of those cases, but as neither party has yet requested the transfer, I do not think it is for this court, of its own motion, to transfer the proceedings now without hearing first from the parties. Should the proceedings be transferred, any existing Supreme Court orders would, of course, survive, and the funds currently in court would remain there until the lower court's proceedings are done. The parties could then request the release or payment of the Supreme Court funds in accordance with the result in the Provincial Court.
- RULE 18 JUDGMENT

- [8] Mr. Redekop's motion originally asked for relief under "Rule 18 or 18A", but the reference to "18A" was scratched out. Obviously Mr. Redekop, either from his own research or from information received in the court registry, understood that masters do not have jurisdiction to conduct summary trials under Rule 18A. He, therefore, and Mr. Duhra, of course, understood that the application was made only under Rule 18.
- [9] In applications under Rule 18 (as opposed to Rule 18A) the court is limited in its consideration of the actual merits or evidence in a dispute. While the court may "test the bona fides of a defence" even if it has found a triable issue[4], typically the enquiry is limited to determining whether there is a triable issue[5]. Mr. Redekop says in his claim that he contracted with Mr. Partridge to dismantle a fence for \$1,000.00, and that he was never paid. He also says Mr. Partridge at first agreed to permit storage of the containers and personal property at the residence, but then, through agents, wrongfully seized them. Mr. Partridge's defence is clear and specific; he says the fence was always Mr. Redekop's and had nothing to do with him. He also says Mr. Redekop left without a forwarding address and without permission to store the property.
- [10] Each party has filed affidavits supporting his pleadings; they show that there is a triable issue and that the parties' positions must be further examined and tested by the court before judgment is possible. Judgment, therefore, cannot be given under Rule 18. FUNDS IN COURT

- [11] Mr. Redekop wants payment to him from the funds (\$2,000.00) in court. That payment depends upon Mr. Redekop getting summary judgment and, since I have refused that application, the funds (or a portion of them) cannot be paid to him. PREVIOUS COSTS ORDER
- [12] On October 10th, 2006, Mr. Partridge's application to remove the CPL came before Master Bolton. Mr. Redekop had not received proper notice. In fact, the application was without notice. In such a case the duty on the applicant is to make full and frank disclosure of all material facts, including those that may qualify the applicant's merits, or support the respondent's case. The motion was supported by a very brief affidavit sworn by Leslie Brown, legal assistant to Mr. Partridge's then-counsel. Nothing was said in that affidavit about contacting or notifying Mr. Redekop, but in his affidavit sworn November 5th, 2006 (incorrectly indicated in the jurat to be 2005) Mr. Partridge said, at para. 4: THAT I was not given nor aware of his forwarding address or any method to contact him at that time that he vacated the property
- [13] Mr. Redekop has attached telephone records to his affidavit. It seems that Mr. Redekop's telephone contract permits him to keep the same telephone number, no matter where he resides in British Columbia. In other words, even as he was leaving Mr. Partridge's residence in Winfield, Mr. Redekop kept his telephone number. The documentary evidence shows that Mr. Partridge (from Nova Scotia) and Mr. Redekop talked by telephone June 2nd, June 15th, June 23rd (twice), July 2nd, August 9th, August 23rd (twice), and August 24th. Three of these calls (June 23rd and both August 23rd calls) were made from Mr. Partridge's number to Mr. Redekop.
- [14] Mr. Partridge also sent a letter to Mr. Redekop dated August 29th and a fax with transmission particulars indicating that it was sent September 8th from "Hanscomb Halifax". Both were received.
- [15] While Mr. Partridge's affidavit evidence (para. 12, above) was, to be clear, sworn November 5th, several weeks after the application heard by Master Bolton October 10th, it is an inescapable inference that Mr. Partridge's British Columbia counsel would have been proceeding on that premise, i.e. that Mr. Partridge did not know how to contact Mr. Redekop. Thus, in my view, the lack of notice to Mr. Redekop.
- [16] It would be an unusual thing for one Master to revisit another Master's order for costs. This case requires that I do so. First, Master Bolton granted each party liberty to apply. More importantly, however, it is clear to me that Mr. Partridge's position was misrepresented to the court. He had means of contacting Mr. Redekop, but there is no indication that he made the court aware of these means. To the contrary, his subsequent evidence specifically contradicted that fact. His duty of full disclosure was not met and, in fact, to repeat, he likely misled the court on an important element of his application.

- [17] The court is therefore obliged, in my view, to revisit and vacate Master Bolton's October 10th costs order *ex debito justitiae*. Master Bolton's order for costs against Mr. Redekop will therefore be vacated. Costs of that application will instead be adjourned. Certainly, I could reverse costs, but as I said above, there are genuine triable issues in this case, and the costs of October 10th should await the resolution of those issues.
- [18] Even though Mr. Redekop has not succeeded in most of this application, in all the circumstances costs will be in the cause. SUMMARY
- [19] In summary, I make the following orders:
1. This matter may continue in this court, but the parties are encouraged to consider transferring the matter to the Provincial Court, Small Claims;
 2. Mr. Redekop's applications for judgment under Rule 18 and for payment out to him of a portion of the funds remaining in court are dismissed;
 3. Master Bolton's order for costs against Mr. Redekop made October 10th is vacated and costs of that date instead are adjourned;
 4. The costs of this application will be costs in the cause. "Master D. Baker"
- [1] R.S.B.C. 1996 c. 406
- [2] R.S.B.C. 1996, c. 443
- [3] viz., eg., *Pachini v. Pietramala* (1995), 7 B.C.L.R. (3d) 266 at para. 16); or *Manley v. Burns Lake Community Development Assn.*, [1996] B.C.J. No. 2236 (QuickLaw)
- [4] *The Conduct of Civil Litigation in British Columbia*, Fraser and Horn, LexisNexis/ Butterworths, at para. 20.8
- [5] *Estaban Mgmt. Corp. v. Eidelweiss Int. Hldg. Corp.* (1990), 43 B.C.L.R. (2d) 335

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