

CANADA / JUDGMENT

Rodrigues v. Tribe

2016 BCSC 1233

COURT

Supreme Court of British Columbia

DECIDED

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2016 BCSC 1233 Rodrigues v. Tribe

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Rodrigues v. Tribe,

2016 BCSC 1233

Date: 20160706

Docket: S157053

Registry: Vancouver

Between:

Crisolo Pedro Franscisco Fernando Rodrigues

and Maria Do Ceu De Jesus Rodrigues

Plaintiffs

And

Donna Diane Tribe (Owner of Unit 347), John Peccia (Owner of Pacific

Quorum Properties Inc.), C. Thomas Woolley (Trust Lawyer) and TD Bank

Defendants

Before: The Honourable Mr. Justice Ehrcke

Reasons for Judgment

Appearing on his own behalf:

C. Rodrigues

Appearing on her own behalf:

M. Rodrigues

Counsel for the Defendant D. Tribe:

R.M. Grist

Counsel for the Defendant J. Peccia:

C.J. Bakker

Counsel for the Defendant T. Woolley:

G. Sexton

Counsel for the Defendant TD Bank:

B.J. Greenberg

R.L. Coad

Place and Date of Hearing:

Vancouver, B.C.

June 13, 2016

Place and Date of Judgment:

Vancouver, B.C.

July 6, 2016

1. INTRODUCTION

- [1] I have before me four applications, brought by each of the four defendants, to have the plaintiffs' claim against them struck out and the case dismissed pursuant to Rule 9-5 of the Supreme Court Civil Rules.
- [2] The defendants filed the following affidavits: Affidavit of Rita de Micheli sworn April 29, 2016, Affidavit of Thomas Craig Woolley sworn April 28, 2016, Affidavit of Damyanti Shankaran sworn May 11, 2016, and Affidavit of John Peccia sworn May 27, 2016. Pursuant to Rule 9-5(2), no evidence is admissible on an application under subrule (1)(a) of Rule 9-5.
- [3] The applications are opposed by the plaintiffs, who appeared before me in person and made submissions, although they had not filed an application response to any of the applications.

2. BACKGROUND

- [4] In the summer of 1994, the plaintiffs purchased unit 111 in a strata titled building on 588 East 5th Avenue in Vancouver (the "Property"). Thomas Craig Woolley ("Mr. Woolley") is the lawyer who was retained by the plaintiffs and Vancouver City Savings Credit Union with respect to the conveyance.
- [5] The defendant Donna Diane Tribe ("Ms. Tribe") owns a condominium unit in the same building as the plaintiffs.
- [6] The defendant John Peccia ("Mr. Peccia") was property manager for the building from 1998-2001, and his company Pacific Quorum Properties Inc. is the current manager.
- [7] The plaintiffs were registered as the owners in fee simple of the Property on August 17, 1994. There was a mortgage on the Property, which was transferred to the defendant, Toronto Dominion Bank ("TD"), in 1998. That mortgage was discharged from the title to the Property in 2002.
- [8] On June 28, 2002, the plaintiffs took out another mortgage with TD. That mortgage was discharged from title to the Property on December 11, 2003.
- [9] TD is not currently the holder of any mortgage relating to the Property or to the plaintiffs. In fact, since 2003, the only dealings TD has had with the plaintiffs is a dormant bank account held by Maria Rodrigues with a balance of about \$0.16.
- [10] In the spring of 2008, Mr. Rodrigues contacted Mr. Woolley expressing concerns about his ownership of the Property and about a power of attorney. Mr. Woolley wrote to Mr. Rodrigues on April 30, 2008 explaining that he knew nothing of a power of attorney, but that he had conducted a title search and confirmed that the plaintiffs remained the registered owners in fee simple of the Property.
- [11] Mr. Woolley heard nothing further from the plaintiffs until he was served with the notice of civil claim in this action No. S157053 that the plaintiffs filed on August 26, 2015 (the "Notice of Civil Claim").
- [12] The allegations made by the plaintiffs in the Notice of Civil Claim are somewhat rambling and difficult to comprehend, but they appear substantially similar to allegations made by the plaintiffs in two previous actions, No. S098811 against their realtor Carrol Barbara Woolsey, and No. H101389 against Pacific Quorum Properties Inc. Action No. S098811 was struck by Leask J. on January 19, 2010, and action No. H101389 was dismissed as disclosing no cause of action by Bowden J. on April 11, 2012.
- [13] On September 10, 2015, counsel for Mr. Woolley wrote to the plaintiffs expressing concern about the intelligibility of their pleadings in the present action No. S157053 and requesting that they amend their Notice of Civil Claim in order to indicate clearly what allegations they were making and what relief they were seeking. He also pointed out that Mr. Woolley is incorrectly named in the style of cause as "C. Thomas Woolley".

[14] On November 16, 2015, a case planning conference was held in the present action, and the plaintiffs were advised that an application would be brought to strike their Notice of Civil Claim. Master Baker directed that the plaintiffs amend their pleadings by December 16, 2015.

[15] On December 4, 2015, Naushad Ahmed, the lawyer assisting the plaintiffs on a limited retainer on this action and who appeared on behalf of the plaintiffs at the case planning conference, sent an email stating: "I am writing to advise you that we will not be amending our Notice of Civil Claim."

3. MR. WOOLLEY'S APPLICATION

[16] On May 4, 2016, Mr. Woolley filed his notice of application seeking to have the Notice of Civil Claim struck out under Rule 9-5(1) on the basis that it fails to disclose a reasonable claim against him, is unnecessary, frivolous or vexatious and an abuse of process of the court, and in the alternative, to have the claim against him dismissed under Rule 9-6 on the basis that there is no genuine issue to be tried and that the claim is statute barred by the passage of time.

[17] Rule 9-5(1) provides:

9-5(1) At any stage of a proceeding, the court may order to be struck out or amended the whole or any part of a pleading, petition or other document on the ground that

- (a) it discloses no reasonable claim or defence, as the case may be,
- (b) it is unnecessary, scandalous, frivolous or vexatious,
- (c) it may prejudice, embarrass or delay the fair trial or hearing of the proceeding, or
- (d) it is otherwise an abuse of the process of the court,

and the court may pronounce judgment or order the proceeding to be stayed or dismissed and may order the costs of the application to be paid as special costs.

[18] Rule 9-6(4) and (5) provide:

9-6(4) In an action, an answering party may, after serving a responding pleading on a claiming party, apply under this rule for judgment dismissing all or part of a claim in the claiming party's originating pleading.

- (5) On hearing an application under subrule (2) or (4), the court,
 - (a) if satisfied that there is no genuine issue for trial with respect to a claim or defence, must pronounce judgment or dismiss the claim accordingly,
 - (b) if satisfied that the only genuine issue is the amount to which the claiming party is entitled, may order a trial of that issue or pronounce judgment with a reference or an accounting to determine the amount,

- (c) if satisfied that the only genuine issue is a question of law, may determine the question and pronounce judgment accordingly, and
- (d) may make any other order it considers will further the object of these Supreme Court Civil Rules.

[19] K. Smith J. described the function of pleadings in *Homalco Indian Band v. British Columbia*, [1998] B.C.J. No. 2703 (S.C.) at para. 5:

The ultimate function of pleadings is to clearly define the issues of fact and law to be determined by the court. The issues must be defined for each cause of action relied upon by the plaintiff. That process is begun by the plaintiff stating, for each cause, the material facts, that is, those facts necessary for the purpose of formulating a complete cause of action

[20] In *Stoneman v. Denman Island Local Trust Committee*, 2010 BCSC 636, Verhoeven J. described the basic, minimum requirements for pleadings in this way at para. 27:

The requirement is simply to set out the material facts upon which the plaintiff relies to support a cause of action known in law. However, when it is apparent that several causes of action are being alleged against multiple defendants, then unless the statement of claim sets out with clarity what facts relate to what cause of action and against which defendant, the pleading fails to "clearly define the issues of fact and law to be determined by the court": *Homalco* at para. 5.

[21] The test for striking out a pleading or dismissing a claim under Rule 9-5 was conveniently summarized by Voith J. in *Sahyoun (Committee of) v. Ho*, 2015 BCSC 392 at paras. 57-63:

[57] The test on an application to strike an action under R. 9-5(1)(a), on the basis the pleadings do not disclose a cause of action, is whether it is plain and obvious the claim cannot succeed. It requires a conclusion that, assuming that the facts as stated are true, those facts disclose no cause of action and the pleadings disclose no arguable issue. If there is a chance that the action may succeed, then the action should be allowed to proceed; *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959 at 980; *Thompson v. Webber*, 2010 BCCA 308 at para. 11; *Canadian Bar Assn. v. British Columbia*, 2008 BCCA 92 at para. 37.

[58] The test for striking a pleading under R. 9-5(1)(b), on the basis that it is unnecessary, scandalous, frivolous or vexatious, was recently summarized in *Willow v. Chong*, 2013 BCSC 1083, where Fisher J. said:

[20] Under Rule 9-5(1)(b), a pleading is unnecessary or vexatious if it does not go to establishing the plaintiff's cause of action, if it does not advance any claim known in law, where it is obvious that an action cannot succeed, or where it would serve no useful purpose and would be a waste of the court's time and public resources: *Citizens for Foreign Aid Reform Inc. v. Canadian Jewish Congress*, [1999] B.C.J. No. 2160 (SC); *Skender v. Farley*, 2007 BCCA 629. If a pleading is so confusing that it is difficult to understand what is pleaded, it may also be unnecessary, frivolous or vexatious.

- [59] An "embarrassing" pleading, as contemplated by R. 9-5(1)(c), is one that is so irrelevant that to allow it to stand would involve useless expense and would also prejudice the trial of the action by involving the parties in a dispute apart from the issues; *Keddie v. Dumas Hotels Ltd.* (1985), 62 B.C.L.R. 145 at 147 (C.A.).
- [60] The abuse of process standard under R. 9-5(1)(d) derives from a flexible doctrine. It allows the court to prevent a claim from proceeding where to do so would violate principles of judicial economy, consistency, finality and the integrity of the administration of justice; *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 at paras. 35-37.
- [61] Though subsections (a)-(d) of R. 9-5(1) address different concerns and different wrongs, there is also some overlap between these subsections. Thus, for example, a pleading that discloses no cause of action, contrary to R. 9-5(1)(a), can also be unnecessary, frivolous or vexatious within the meaning of R. 9-5(1)(b); see e.g. *Virk v. Brar*, 2012 BCSC 1004 at paras. 69-70.
- [62] A pleading can be embarrassing if it does not state the real issue in an intelligible form. It can also be embarrassing if it is prolix, includes irrelevant facts, argument or evidence. It can be prejudicial if it is designed to or has the effect of confusing the defendant, making it difficult, if not impossible, to answer; *Virk* at para. 75.
- [63] These same concerns can constitute an abuse of the court if a litigant has been expressly told that there are aspects of its pleadings that are deficient or defective, and if that litigant persists, in its amended claim, to advance the same claims or issues in the same way.
- [22] At paragraph 10 of Mr. Woolley's notice of application, he characterizes the inadequacies of the plaintiffs' Notice of Civil Claim in the following way:
10. The Notice of Civil Claim is prolix, difficult to understand, does not advance a claim known in law and is without substance. It may be interpreted to include the following allegations against Mr. Woolley: conflict of interest, fraud, conversion, unspecified criminal offence, conspiracy, unjust enrichment and unclean hands for which they seek special damages, punitive damages and other such relief. However, there are no intelligible material facts pled to support the basis for any of these claims nor does the Notice of Civil Claim identify which defendants each of these purported claims are directed at.
- [23] I entirely agree with that characterization of the Notice of Civil Claim. It is plain and obvious that the Notice of Civil Claim does not disclose any coherent, reasonable cause of action against Mr. Woolley. Even if one assumes that the facts pleaded could be proven as true, those facts disclose no arguable case.
- [24] The plaintiffs were put on notice about the defective nature of their Notice of Civil Claim and were given the opportunity to amend it. They chose not to do so.
- [25] The deficiencies in the pleadings here lead to the same conclusion as that reached by Voith J. in *Sahyoun (Committee of) v. Ho*. In that case, he found at para. 64:

[64] In this case, the Amended Pleading is so overwhelmed with difficulty that it is simply not possible to fully identify all of the specific inadequacies that exist, or to categorize those difficulties into the specific subparagraphs of R. 9-5(1). It is also not possible to deal with the deficiencies in the Amended Pleading that relate to individual defendants, as often multiple causes of action are advanced against a single defendant. I am, however, satisfied that most of the Amended Pleading does not comply with R. 9-5(1), and that very significant portions of the Amended Pleading offend one or more of the subparagraphs in the rule.

[26] Accordingly, the Notice of Civil Claim is struck out and dismissed as against Mr. Woolley pursuant to Rule 9-5(1).

[27] In light of that finding, I need not consider the alternative submission under Rule 9-6.

4. TD'S APPLICATION

[28] The Notice of Civil Claim does not specifically mention TD in any of its factual allegations. It does, however, mention "our Bank" in paragraph 9 of Part 1 Statement of Facts:

9. Due to onset Real Estate fraud of conveyancing and mortgage registration by the registrant, our Bank was and is holding our condo as collateral and as a sole Judge such as our eligible trust strata "Assets" conversion securities interest schedule, Form 2 of LTA Form A transfer section 185(1) of LTA Form U of SPA etc to be referred to our state title Certificate applied various statutes, MLS listing advertisement, indefeasible title certificate, Section 36 certificate or B with no endorsement at the back on it or the provisions on it which remained uncanceled and with us. For us and for our accountant to cancel upon our sale of our unit, copies will be provided.

[29] In the Notice of Civil Claim Part 3 Legal Basis, the plaintiffs make allegations of conspiracy to affect real estate prices, breaches of the Competition Act, R.S.C. 1985, c. C-34, unjust enrichment, fraud, and a refusal to disclose documents. However, no material facts are alleged against TD that could support such claims.

[30] It is plain and obvious that the Notice of Civil Claim does not disclose any reasonable cause of action against TD, and the Notice of Civil Claim is accordingly struck out and dismissed as against TD pursuant to Rule 9-5(1).

5. MS. TRIBE'S APPLICATION

[31] Ms. Tribe is the owner of unit 347 in the same building as the plaintiffs.

[32] In paragraph 1 of the Statement of Facts of their Notice of Civil Claim the plaintiffs allege that their unit suffered water damage caused by the owner of unit 347. That paragraph states:

1. On or about 14 Dec. 2014 and before our strata by law came into effect i.e. 19 Feb. 2015 our strata unit #111 below which my wife and I purchased as first time buyers. And which was advertised as a freehold in the MLS listing in Vancouver BC, suffered extensive water damage caused by my strata Council Vice President and owner of unit #347 above. AND NOT BY US.
- [33] In paragraph 2, the plaintiffs state that they are not responsible for the repair of their strata unit.
- [34] In paragraph 6 they say:
 6. We sent several letters and made several phone calls to Donna Tribe #347, Strata President Jonna Hanson Unit #109, Mr. John Peccia of Pacific Quorum Properties Inc. Our (Bank) Mr. Bruno De Vita and our lawyer and VanCity Credit Union lawyer Mr. Thomas C. Woolley, to no avail (conflict of interests).
- [35] With respect to the water damage, the Notice of Civil Claim does not allege any negligence on the part of Ms. Tribe, nor is there a claim in nuisance. The claims of fraud, conspiracy, unjust enrichment, conversion and so on appear to be unrelated to the water damage, and are in any case unsupported by any of the material facts pled.
- [36] As previously noted, the plaintiffs were given an opportunity to amend their pleadings, and they chose not to do so. It is not for the defendants or for this Court to try to construct a possible legal path to relief when the plaintiffs have failed to do so in their pleadings and when the Notice of Civil Claim does not allege facts that would support the relief they have asked for. The fact that the plaintiffs are now unrepresented by counsel does not relieve them from the responsibility of providing the Court and the defendants with intelligible pleadings that meet the minimum requirements of the Supreme Court Civil Rules.
- [37] As Garson J.A. wrote in *Jensen v. Jackman*, 2010 BCCA 6 at para. 26:
- [26] The precise nature of the claims Ms. Jensen advances is unclear. Her proposed statements of claim are, as I have already said, prolix. It is not for the Court to articulate for a litigant, from such materials, a comprehensible and legally cognizable cause of action. Pleadings must enable the court, within a reasonable time in review of the pleading, to find in those pleadings the cause of action, and the material facts upon which the cause of action is based. Ms. Jensen's proposed pleadings are an abuse of the court's process because they do not meet these minimum requirements of pleadings. In saying this, I recognize that Ms. Jensen is self-represented and may be entitled to some latitude in meeting the requirements of pleadings, but where, as here, the pleadings do not satisfy the function of pleadings at all, they are an abuse of the process of the court.
- [38] It is plain and obvious that the Notice of Civil Claim does not disclose any reasonable cause of action against Ms. Tribe, and the Notice of Civil Claim is accordingly struck out and dismissed as against her pursuant to Rule 9-5(1).

6. MR. PECCIA'S APPLICATION

- [39] Mr. Peccia was the property manager from 1998 to 2001, but has had no personal involvement with the operation of the strata since that time.
- [40] As with the other defendants, the Notice of Civil Claim does not set out any intelligible claim against him, and there are no material facts alleged against him that would support any of the relief claimed.
- [41] It is plain and obvious that the Notice of Civil Claim does not disclose any reasonable cause of action against Mr. Peccia, and the Notice of Civil Claim is accordingly struck out and dismissed as against him pursuant to Rule 9-5(1).

7. THE PLAINTIFFS' SUBMISSIONS

- [42] As set out above, the plaintiffs appeared in person on the hearing of these applications. Mr. Rodrigues made oral submissions opposing the applications. Ms. Rodrigues stated that she did not wish to make any submissions in addition to those of Mr. Rodrigues. They presented the court with two binders of materials. Neither of the plaintiffs made any request to amend their pleadings.
- [43] Nothing in the plaintiffs' submissions or the material in their binders provides any basis for refusing the relief sought by the defendants in their applications.

8. CONCLUSION

- [44] All four of the applications of the defendants are allowed. The Notice of Civil Claim is struck out and dismissed as against all four defendants pursuant to Rule 9-5(1).
- [45] All four defendants are entitled to their costs on scale B.

"The Honourable Mr. Justice W.F. Ehrcke"

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