
CANADA / JUDGMENT

RTD Quality Services Inc. v. Dhatt

2020 BCSC 1562

COURT

Supreme Court of British Columbia

DECIDED

24 August 2020

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2020 BCSC 1562 RTD Quality Services Inc. v. Dhatt

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

RTD Quality Services Inc. v. Dhatt,

2020 BCSC 1562

Date: 20200824

Docket: S208367

Registry: Vancouver

Between:

RTD Quality Services Inc., doing business as "Applus Canada" SKC Inspection and Non-Destructive Testing Inc. and SKC Engineering Ltd.

Plaintiffs

And

Jasvir Kaur Dhatt

Defendant

Before: The Honourable Madam Justice Wilkinson

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiffs, appearing by telephone:

J.R. Schmidt

No one appearing on behalf of the Defendant

Place and Date of Hearing:

Vancouver, B.C.

August 24, 2020

Place and Date of Judgment:

Vancouver, B.C.

August 24, 2020

- [1] These Reasons for Judgment were delivered as oral reasons. They have since been edited for distribution.
- [2] This application was brought without notice to the defendant.
- [3] The plaintiffs are related parties engaged in project management for pipelines, production facilities, refinery and storage facilities in the oil and gas and renewable energy sectors and national utility and infrastructure markets. They have operations in Surrey, British Columbia.
- [4] The defendant started employment on April 15, 2019 as a full-time employee of the plaintiff RTD Quality Services Inc. ("RTD") and worked at their Surrey office as an operations analyst, supporting the plaintiffs. Her position was clerical or administrative in nature. She was responsible for handling both accounts receivable and accounts payable, including processing and submitting time and expense claims from employees of the plaintiffs. The employees included the defendant herself.
- [5] The defendant's salary and expense claim payments were deposited to her Coast Capital Savings Federal Credit Union account.
- [6] The plaintiffs allege that the defendant conceived and executed a scheme in which she submitted false time and expense claims and for which she received payment from the plaintiff RTD. They allege she prepared false invoices from third parties and claimed she paid those invoices through the use of her personal credit card. They further allege she then submitted those expense claims for reimbursement to the plaintiffs' payment processing service provider for payment. They allege she created a signature purporting to be that of an appropriate signing authority on those claims. The defendant then received payment from the plaintiffs for those false claims by way of direct deposit to her bank account.
- [7] On Friday, August 14, 2020, the plaintiffs' finance manager took note of a large expense being paid to the defendant. He sought confirmation as to whether the expense was a mistake or should be identified as a capital expenditure. He was provided with four weekly expense forms from the defendant which contained no employee signature but did contain a management approval signature. The defendant allegedly confirmed on that day that she signed these forms herself as the approver and sent them to the processor for payment. When asked via email for some more evidence of the fact that she paid for the expenses in

the form of her credit card statement, the defendant wrote back on Friday, the 14th, at 3:51 p.m., "Oh off [sic] course for sure, I will provide those on Monday!"

- [8] The defendant did not provide the documentation, nor did she return to work on Monday, nor has she returned by the date of this application.
- [9] The plaintiffs' corporate compliance group began an investigation. They made inquiries to the purported vendors. By the date of this application, three of the vendors confirmed that no goods or services were ever provided as described in invoices submitted by the defendant.
- [10] The plaintiffs identified \$298,469.83 in reimbursement payments made to the defendant between June 1, 2019 and August 2020. The defendant's job description and duties do not involve incurring expenses in amounts anywhere close to those claimed over that period. The plaintiffs continue to investigate the defendant's expense claims.
- [11] The defendant was issued two laptops by her employer for use in her employment, one of which the plaintiffs submit she has in her possession.

The Mareva injunction sought

- [12] The plaintiffs seek a Mareva injunction restraining the defendant from dealing with her assets, subject to certain terms and conditions, anywhere they are situated. They also seek a direction that the defendant forthwith deliver up to the plaintiffs the laptop computer and a direction that the defendant's bank disclose to the plaintiffs' legal counsel banking records connected to her account.
- [13] The jurisdiction to issue a Mareva injunction derives from s. 39 of the Law and Equity Act, R.S.B.C. 1996 c. 253, Rule 10-4 of the Supreme Court Civil Rules, B.C. Reg. 168/2009 [Rules], and the Court's inherent jurisdiction.
- [14] This Court has in personam jurisdiction over the defendant. Based on the evidence before me, I am satisfied that she resides in British Columbia.
- [15] On an application for a Mareva injunction, the applicant must show a strong prima facie or good arguable case on the merits and the interests of the parties must be balanced to reach a just and convenient result. Fundamentally, the question in each case comes down to whether the granting of an injunction is just and equitable in all the circumstances of the case: *ICBC v. Patko*, 2008 BCCA 65 at para. 25; *Tracy v. Instalogs Financial Solutions Centres (B.C.) Ltd.*, 2007 BCCA 481 at paras. 31, 40, 54 and 60; *Blue Horizon Energy Inc. v. Ko Yo Development Co. Ltd.*, 2012 BCSC 58 at paras. 14-30.
- [16] As the plaintiffs submit, a strict formula should not be applied to the determination of what constitutes a "strong prima facie case" or "a good arguable case". The plaintiffs must make out more than an arguable case but do not have to reach a "bound to succeed" threshold: *Tracy* at para. 54.

- [17] Two relevant factors when considering the just and convenient result question whether the evidence shows the existence of assets within British Columbia or outside and that there is a real risk of the disposal or dissipation of such assets so as to render nugatory any judgment. However, there is no list of factors which must necessarily be considered by the Court in the two-part analysis. Each case ought to be decided in its own factual matrix: *Blue Horizon* at para. 30.
- [18] In cases alleging serious fraud, the risk that assets will be dissipated may be inferred from the evidence of the plaintiffs' strong prima facie case. The question of irreparable harm may also be considered under the balance of convenience: *Patko* at paras. 25 and 28; *Tracy* at para. 60, and *Blue Horizon* at paras. 14-30.
- [19] The plaintiffs' primary cause of action as set out in their Notice of Claim is fraudulent misrepresentation. They have provided evidence as I set out which establishes a strong prima facie or at least a good arguable case that the defendant engaged in fraudulent misrepresentation. The evidence further supports a prima facie or good arguable case that this has resulted in a misappropriation of funds totalling at least \$298,469.83.
- [20] This is a similar case to that of *Oneworld Accuracy Inc. v. Fok*, 2014 BCSC 148 at para. 30 in which, on the application for an injunction, the Court found:

The evident deceit which the defendant has employed in converting his employer's funds to himself over an apparently significant period of time simply does not anchor any likelihood that such behaviour would not continue in the event such an order or injunction were not granted.

- [21] While the defendant here no longer has access to employer funds, the risk of dissipation is not nullified. The defendant maintains a bank account in British Columbia into which both her salary and the proceeds of the misrepresentation have been paid. She was alerted to the plaintiffs' concerns about the validity of her recent claims 10 days ago. Her last communication with the plaintiffs was a promise to provide support for those claims. She has since gone silent and not returned to work. Given the nature of the fraud and the defendant's recent behaviour, I infer that there is a risk that the defendant will dissipate her assets for the purpose of frustrating a judgment obtained against her.
- [22] Apart from the known bank account, the defendant has no assets of any significance in British Columbia that the plaintiffs can locate. If the defendant dissipates her assets, the plaintiffs' ability to recover judgment against the defendant will be seriously impaired. A finding of potential for non-recovery can establish irreparable harm for the purposes of a Mareva injunction: *Tracy*, at para. 61. With no readily ascertainable assets, I do find that there is great potential for non-recovery of a judgment without an injunction. It would have the effect of hampering or defeating the plaintiffs' attempts to realize on any judgment they might obtain.

- [23] I am satisfied the plaintiffs have demonstrated that they have a strong prima facie case against the defendant based on the documents uncovered during their very recent investigation to date, as well as statements made by the defendant and the defendant's behaviour in not showing up to work after being confronted with the possibility of problems with regard to her reimbursement claims.
- [24] Consistent with the authorities cited by the plaintiffs, and based on my review of the evidence submitted, I am satisfied that given there is a strong prima facie case of fraud that has been established against the defendant, and my inference that there is a real risk that her assets will be removed from the jurisdiction or dissipated, I conclude that if she did dissipate her assets, it would have the effect of hampering or defeating the plaintiffs' attempts to realize on any judgment they might obtain.
- [25] I am satisfied that the prejudice to the plaintiffs if the injunction sought is not granted outweighs the prejudice to the defendant in granting the injunction.
- [26] The property affected by the injunction sought will not be taken away from the defendant. The defendant will be enjoined from disposing or dissipating the affected property. The plaintiffs also provide for an exception for the defendant's ordinary living expenses and legal expenses. The defendant will have the usual short leave to seek to vary or set aside the injunction order, and the opportunity to post security in lieu of the injunction.
- [27] Further, the plaintiffs will provide the usual form of undertaking to damages. The plaintiffs' operations are a going concern with sufficient assets to satisfy the undertaking.
- [28] I find that the granting of an injunction is just, equitable, and convenient in all the circumstances, and in granting the injunction, I have also balanced the relevant factors in the interests of both the plaintiffs and the defendant.

Rule 10-1(1) application regarding the laptop

- [29] The plaintiffs also seek an order pursuant to Rule 10-1(1) for the detention, custody or preservation of property in the form of the corporate laptop identified in the application materials. I have considered the questions set out in *Kepis & Pobe Financial Group Inc. v. Timis Corporation*, 2018 BCCA 420 at para. 21, namely:
- a) Is there a claim on the evidence and not just the pleadings to a proprietary interest in the property?
 - b) Is there some evidence to render reasonable the belief of the plaintiffs that the property is threatened with disposition or transfer outside the jurisdiction?
 - c) Is there a substantial question to be decided as to the plaintiff's entitlement to the property?
 - d) Does the balance of convenience favour granting the order?

- [30] The laptop is clearly property belonging to the plaintiffs. It likely contains confidential information belonging to the plaintiffs. It may contain evidence of the defendant's fraudulent misrepresentation. The defendant has not returned to the workplace, nor contacted the plaintiffs since her commitment to provide evidence supporting her reimbursement claims.
- [31] The plaintiffs express a concern that the defendant may destroy evidence of the defendant's actions which exists on the laptop. They are also worried that the defendant may disseminate corporate confidential information which is on the laptop. I find those concerns to be valid based on the actions of the defendant to date.
- [32] The defendant has no proprietary interest in the laptop.
- [33] I find that there is a risk of the plaintiffs suffering immediate and irreparable harm if the laptop is not returned to the plaintiffs. The defendant will suffer no harm if the laptop is ordered returned to the plaintiffs. If the laptop does contain evidence of the fraudulent actions of the defendant, it is in the interests of justice that such information be preserved and provided to the plaintiffs.
- [34] Having regard to all the circumstances before me, the balance of convenience favours the granting of an order pursuant to Rule 10-1(4) requiring the defendant to deliver the laptop to the plaintiffs.

Third party production order for bank records

- [35] The plaintiffs seek a further order for the production of the defendant's bank account information and documents from Coast Capital Savings Federal Credit Union. Such Norwich-type orders have been granted where the disclosure of the information and documents sought was necessary to trace and preserve assets: *Alberta (Treasury Branches) v. Leahy*, 2000 ABQB 575 at para. 106, aff'd 2002 ABCA 101; *Procon Mining and Tunnelling Ltd. v. McNeil*, 2007 BCSC 454 at para. 27.
- [36] On an application for Norwich-type relief consideration of the following factors is relevant to whether the order should be made: *Alberta (Treasury Branches)* at para. 106 and *Procon Mining* at para. 27:
- whether the applicant has provided evidence sufficient to raise a valid, bona fide or reasonable claim;
 - whether the applicant has established a relationship with the third party from whom the information is sought that establishes that the third party is somehow invoked in the acts complained of;
 - whether the third party is the only practicable source of the information available;

- d) whether the third party can be indemnified for costs to which the third party may be exposed because of the disclosure and associated expenses of complying with the order; and
 - e) whether the interests of justice favour the obtaining of the disclosure.
- [37] I have already found that the plaintiffs have provided sufficient evidence to make out a valid bona fide or reasonable claim. The evidence is clear that the bank account was used to receive the misappropriated funds. The bank is the only practicable source of the banking records and information as it will reliably provide the documentary evidence sought by the plaintiffs. The plaintiffs agree to indemnify the bank for any costs to which it may be exposed. The information contained in the records is necessary to determine the true extent of the defendant's fraud, and to trace and preserve funds or assets acquired by the defendant with the funds. If disclosure is not provided, the plaintiffs' ability to recover the misappropriated funds is likely to be substantially compromised.
- [38] The plaintiffs have made out a solid case for production of information and documents from the third party financial institution in its Norwich application. I note in particular the plaintiffs are pleading conversion and seeking disgorgement of proceeds, and tracing is essential for this type of claim.

Conclusion

- [39] I grant the relief sought by the plaintiffs, in particular seeking the following orders: an order restraining the defendant from dealing with her assets, subject to certain terms and conditions anywhere they may be situated, and that is in the form of order for a freezing order, an order for disclosure by the defendant, an order with regard to third parties, an order for production of financial institution records, and a surrender of personal property order as prepared and presented in the draft form of order with the following changes -- at Paragraph 3, the amount of funds frozen is \$300,000, not \$500,000 or up to, and under the "Exceptions" section at paragraph 4, the amount of spending per month on ordinary living expenses is changed from \$2,000 a month to \$2,500 a month.
- [40] THE COURT: I do not know what the plaintiffs' position on costs is.
- [submissions]
- [41] THE COURT: The plaintiffs are at liberty to apply for costs on the application. No costs at this point are ordered at this time.

"Wilkinson J."

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