

CANADA / JUDGMENT

Saadatmandi v. 1252988 B.C. Ltd.

2020 BCSC 1469

COURT

Supreme Court of British Columbia

DECIDED

5 October 2020

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2020 BCSC 1469 Saadatmandi v. 1252988 B.C. Ltd.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Saadatmandi v. 1252988 B.C. Ltd.,

2020 BCSC 1469

Date: 20201005

Docket: S207214

Registry: Vancouver

Between:

Bahram Saadatmandi

Plaintiff

And

1252988 B.C. Ltd., Hamid Tavakolikhaledi

and Jalaledin Etemadahari

Defendants

Before: The Honourable Mr. Justice Mayer

Reasons for Judgment

Counsel for the Plaintiff:

R. Alam

Counsel for the Defendants:

R. Clark, Q.C.

Place and Date of Trial/Hearing:

Vancouver, B.C.

September 15, 2020

Place and Date of Judgment:

Vancouver, B.C.

October 5, 2020

Introduction

[1] In this application the defendants 1252988 B.C. Ltd. ("125"), Hamid Tavakolikhaleli and Jalaleddin Etemadahari apply to strike and cancel four certificates of pending litigation ("CPLs") registered on four properties in Port Coquitlam (collectively the "Lands"), on the basis that the plaintiff Bahram Saadatmandi's claim does not advance or disclose a valid claim to an interest in the Lands.

Background

[2] Mr. Saadatmandi, Mr. Tavakolikhaleli and Mr. Etemadahari are each equal shareholders in 1136242 B.C. Ltd. incorporated on October 3, 2017 ("113"). 113 was established to assemble the four properties comprising the Lands and then rezone the Lands for development. The four properties comprising the Lands were purchased by 113 between October 2017 and January 2019.

[3] There is no written shareholders' agreement between the shareholders of 113. Mr. Tavakolikhaleli and Mr. Etemadahari say that all of the shareholders agreed that they would be equal shareholders and would fund the project as required in equal contributions and would share equally in the profits.

[4] Mr. Tavakolikhaleli and Mr. Etemadahari say that Mr. Saadatmandi did not provide his share of contributions towards developing the Lands and after they failed to negotiate a purchase of his shares in 113 decided to remove him as a director and to sell the assets of, and wind up, the company. Mr. Saadatmandi says that he failed to provide his share of contributions towards the costs of 113 because Mr. Etemadahari had failed to make contributions towards the costs of maintaining or developing other properties owned by a separate company, the shares of which were owned by both of them.

- [5] After shareholders' and directors' meetings of 113 in May and June 2020, which Mr. Saadatmandi did not attend despite being given notice, he was removed as a director. Mr. Tavakolikhaleli and Mr. Etemadahari obtained appraisals for each of the individual properties comprising the Lands and the Lands were sold, it is alleged by them for fair market value, to the defendant 125. Mr. Tavakolikhaleli and Mr. Etemadahari own the shares of 125.
- [6] Mr. Saadatmandi disputes the legitimacy of the appraisals and the subsequent sale of the Lands on the basis that it is was improper to complete the appraisals on a parcel by parcel basis and to not consider the value of all of the land assembly for development purposes. He contends that the sale of the Lands by 113 to 125 was made for less than market value.
- [7] On July 9, 2020 Mr. Saadatmandi commenced an action naming Mr. Tavakolikhaleli and Mr. Etemadahari as personal defendants. He sought issuance of CPLs on the four properties comprising the Lands, which were not granted. Subsequently, on July 21, 2020 Mr. Saadatmandi commenced the present action, which now included, in addition to Mr. Tavakolikhaleli and Mr. Etemadahari, 125 as a defendant. He then obtained and registered the CPL's against the Lands.

Analysis and Disposition

- [8] The authority to register a certificate of pending litigation against land is set out in section 215 of the Land Title Act, R.S.B.C. 1996, c. 250 which grants such authority to a person who has commenced a proceeding and is claiming an interest in land. The owner of the lands in question is able to bring an application for cancellation of a CPL under s. 256 of the Land Title Act.
- [9] In this case the defendants' application is based on their contention that Mr. Saadatmandi has not plead an interest in the Lands which justified the issuance and registration of the CPLs. It is therefore necessary to examine Mr. Saadatmandi's pleadings to determine whether they advance a claim for an interest in land.
- [10] The pleadings in the Notice of Civil Claim filed July 21, 2020 which form the basis for Mr. Saadatmandi's claim for an interest in land are brief. Relevant pleadings include the following:

Company 11 Properties

17. At all material times the Company 11 Properties were held in trust for the Plaintiff and the Former Business Partners.

Plaintiff's Position

27. Insofar as the Defendants, Etemadahari and Tavakolikhaledi, transferred the Company 11 Properties to Company 12 for below fair market value, The Defendants hold that portion of the Company 11 Properties in trust for the Plaintiff and the Plaintiff claims an interest in the Company 11 Properties as beneficiary.
- [11] In his Notice of Civil Claim Mr. Saadatmandi seeks relief including, in summary, the following:
- a) A declaration of constructive trust, or alternatively a remedial trust over the Lands and a declaration that 125 holds the Lands, or a portion thereof, in trust for him;
 - b) CPLs over the Lands; and
 - c) Various oppression remedies under ss. 227 and 324 of the Business Corporations Act, S.B.C. 2002, c. 57 on the basis that the affairs of 113 are or have been conducted in an oppressive or unfairly prejudicial manner.
- [12] The relevant pleading in Mr. Saadatmandi's claim, as set out in para. 27 of the Notice of Civil Claim, is that insofar as the personal defendants transferred the properties to 125 for below fair market value they hold that portion (that portion being, I assume, the difference between the sale price and fair market value) in trust for him as beneficiary.
- [13] In this case there is no question that prior to their sale by 113 to 125, the Lands were owned by 113. Although Mr. Saadatmandi owned one-third of the shares of 113 he did not own the Lands, the company did.
- [14] The defendants rely on the rule in *Foss v. Harbottle* (1843), 67 ER 189, for the proposition that Mr. Saadatmandi, as a shareholder of 113, does not have the ability to advance a claim against the Lands in his individual capacity. That is, they contend that right to bring this claim resides with 113.
- [15] As set out by the Supreme Court of Canada in *Hercules Management v. Ernst & Young*, [1997] 2 S.C.R. 165 at para. 59:
- [59] The rule in *Foss v. Harbottle* provides that individual shareholders have no cause of action in law for any wrongs done to the corporation and that if an action is to be brought in respect of such losses, it must be brought either by the corporation itself (through management) or by way of a derivative action
- [16] The rule in *Foss v. Harbottle* does not entirely prohibit claims by shareholders who have suffered a personal wrong. It does not apply to suits for direct personal damages arising from personal wrongs done to an individual: See *Paz v. Hardouin*, [1992] B.C.J. No. 2816 at page 5 [Paz].

[17] In Paz, Justice Saunders, as she then was, discussed the difference between a claim which could be brought by a shareholder in his or her individual capacity and a claim which a shareholder is authorized to advance on behalf of a company - the latter being a derivative action:

The distinction between a personal action and a derivative action was discussed by Mr. Justice Cumming in *McGauley v. B.C.* (1989), 39 B.C.L.R. (2d) 223 at 233:

The question as to whether loss suffered by the shareholder is or is not identical to or co-extensive with that sustained by the corporation is irrelevant: The question which is relevant is whether the shareholder's loss is the result of some wrong committed against him in his personal capacity or is simply a consequence of the wrong committed against the corporation. [Paz, at page 7.]

[18] Although Mr. Saadatmandi arguably has a claim which arises from an alleged wrong committed against him, as opposed to simply a wrong committed against 113, the authorities do not support a shareholder advancing a claim against the assets of a company.

[19] As set out in the decision of Justice Ball in *Shi v. Duan*, 2017 BCSC 2002, at para. 23:

[23] A shareholder may seek a remedy when the corporation is injured by commencing a derivative action, but only with leave of the court under s. 232 of the Business Corporations Act, S.B.C. 2002, c. 57 [Act]; in the circumstances of this case the "assets and profits" of DHS are the property of DHS, and not the property of a shareholder. The shareholder holds an interest in the shares which have been issued to the shareholder, but not in the assets, profits or property of a company.

[20] As was stated by Justice Choi in *Schmidt v. Balcom*, 2016 BCSC 2438:

[26] The law in British Columbia is well settled that a shareholder of a corporation has no proprietary interest in land owned by the corporation: *Rohani v. Rohani*, 2004 BCCA 605; *Sherk v. Smith*, 2007 BCSC 1309; *Blackwell v. Stewart*, 2015 BCSC 1716.

[21] Justice Choi summarized a portion of the findings of Justice Ehrcke in *Blackwell* at para. 27 of *Schmidt*:

[27] the fact that a shareholder is entitled to a proportionate share of the assets of a corporation on winding up, does not mean that the shareholder has a claim against the underlying assets of the corporation in specie, nor a proprietary claim to the land owned by the corporation prior to winding up. Rather, the proportionate share of the assets to which a shareholder is entitled on winding up, means a proportionate sale of the value of the assets.

[22] In my view, para. 27 of the Notice of Claim does not advance a claim for an interest in the Lands but rather a claim for interest in a portion of the proceeds from the sale of the Lands based on Mr. Saadatmandi's assertion that the personal defendants sold the Lands to a company controlled by them for less than fair market value.

- [23] With respect to Mr. Saadatmandi's claim for a remedial constructive trust, which he contends gives rise to an interest in the Lands, a party seeking such a trust must first establish "a substantial and direct link, a causal connection or a nexus between the claim and the property upon which the remedial constructive trust is to be impressed". Second they must demonstrate that "a monetary award is inadequate, insufficient or inappropriate in the circumstances.": *Nouhi v. Pourtaghi*, 2019 BCSC 794 at para. 26, referring to *Kerr v. Baranow*, 2011 SCC 10 at para. 50, *Pro-Sys Consultants Ltd. v. Microsoft Corporation*, 2013 SCC 57 at para. 92 and *Li v. Li*, 2017 BCSC 1312 at para. 227.
- [24] I accept that in this case Mr. Saadatmandi's claim sets out a nexus between his claim and the Lands on which he seeks to impress a constructive trust. I do not find that his pleadings set out why a monetary award for his losses is inappropriate or insufficient to and therefore the claim does not ground a constructive trust: See *Pro-Sys*, at para. 92 referred to in para. 27 of *Nouhi*.
- [25] With respect to Mr. Saadatmandi's claim for a resulting trust over the Lands such a claim arises when an owner has gratuitously transferred title to another who is under an obligation to return it to the original title holder as a result of their status as a fiduciary: *Suen v. Suen*, 2013 BCCA 313 at paras. 35 and 36. In this case any claim to a resulting trust can only reside with 113 to obtain the return of the Lands on the basis that they were transferred gratuitously.
- [26] For the reasons set out above I find that Mr. Saadatmandi has not advanced, and in the circumstances of this case is not able to advance, a claim for an interest in the Lands. As a result, the CPLs are cancelled pursuant to ss. 215 and 256 of the Land Title Act.
- [27] Mr. Saadatmandi is not without remedies in this case. He is able to proceed with his oppression remedy claim and seek damages arising from his alleged mistreatment as a shareholder of 113.

"Mayer J."

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