

CANADA / JUDGMENT

Samra v. Bring

2020 BCSC 109

COURT

Supreme Court of British Columbia

DECIDED

29 January 2020

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2020 BCSC 109 Samra v. Bring

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Samra v. Bring,

2020 BCSC 109

Date: 20200129

Docket: S205314

Registry: New Westminster

Between:

Arshveer Samra

Plaintiff

And

Amandeep Singh Bring, Jagdev Singh Sikham, Jagdev Singh Sikham, Kudratvir Singh "Kujo" Singh Jhaj, East to West Group of Companies, East to West Holdings Ltd., East to West Insurance Ltd., East to West Financial Corporation, East to West Insurance Brokerage Ltd., East to West Leasing Ltd., and Buckley Hogan Law Corporation

Defendants

Before: The Honourable Madam Justice B.J. Brown

Reasons for Judgment

The plaintiff, appearing in person:

A. Samra

Counsel for Defendant, Kudratvir Singh Jhaj:

K. Murray

J. Stansfield

Place and Date of Hearing:

New Westminster, B.C.

November 19, 2019

Place and Date of Judgment:

New Westminster, B.C.

January 29, 2020

- [1] There are two summary trial applications before me. The first is brought by Mr. Samra (Although he does not specify the rule on which he relies, it is clear from his application and submissions that he intends this application to be brought pursuant to Rule 9-7). The only remaining defendant, Mr. Jhaj also brings an application pursuant to Rule 9-7 to have the action against him dismissed.
- [2] In his pleadings, Mr. Samra seeks judgment against Mr. Jhaj for general damages, compensatory damages, expectation damages, consequential damages, pecuniary and non-pecuniary damages, punitive damages, aggravated damages and court order interest and costs.
- [3] Mr. Samra pleads duty of loyalty/conflict of interest; negligence; negligent misrepresentation; intentional and/or negligent infliction of mental suffering/emotional distress; nervous shock; breach of contract/void contract; joint and several liability; vicarious liability.
- [4] The defendant Mr. Jhaj raises a number of defences to the claim and says that the action must fail.

Background

- [5] Mr. Samra is a lawyer. In 2018 he was looking to purchase a commercial strata unit for his law office. He learned that Unit 221 8028 128 Street in Surrey was available. He made an offer to purchase that unit for \$675,000 including furnishings. He paid a deposit of \$33,750.
- [6] The MLS listing showed the square footage for unit 221 at 1183 ft.². That listing was provided to Mr. Samra at his request by one of the principals of the vender.
- [7] Mr. Samra says that he believed that the unit was 1183 ft.² and that this was fundamental to his purchase.

- [8] The agreement was drawn by the real estate agent acting for the vendor, Mr. Jhaj. It did not contain any subjects with respect to verifying the square footage of the unit. Mr. Samra inspected the unit himself prior to signing the agreement of purchase and sale.
- [9] After the agreement was signed, Mr. Samra retained an appraiser to appraise the unit so that he could obtain mortgage financing. The appraiser provided an opinion that the property was worth \$645,000, and was 1076 ft.², rather than 1183 ft.² as indicated in the listing. The agreed-upon price was \$675,000 which included certain furniture and equipment.
- [10] Mr. Samra was very disappointed. In his view, he was losing approximately \$61,000 in value because the unit was smaller than represented. On June 25, 2018 Mr. Samra notified the principal of the vendor that the property was not 1183 ft.² as indicated and that he wanted a price reduction or return of his deposit.
- [11] On June 26, 2018 Mr. Jhaj emailed Mr. Samra advising that the deposit would be returned once he signed a deposit release and a collapsed sale report.
- [12] Mr. Samra was not prepared to sign a deposit release and collapsed sale report. Apparently he thought that this request was some form of fraud or that return of the money would be proceeds of crime.
- [13] On the closing date, July 2, 2018, Mr. Samra did not complete the agreement of purchase and sale. On August 31, 2018 the property was sold to another purchaser for \$670,000 including the furniture and equipment.
- [14] Mr. Samra says that before these events he had been diagnosed with bi-polar disorder. He had occasional depressed mood and repeated manic episodes between 2012 and 2014. In 2015-2018 he was treated by a psychiatrist, Dr. Khan, and did not experience prominent manic episodes.
- [15] Mr. Samra says that because of the misrepresentation and the communications back and forth he became paranoid, hyper-focused and stressed. His condition worsened. He went to his doctor, who prescribed a different medication. After taking that medication, he became delusional and developed a full-blown manic episode. He says that that this would have happened even without the change in medication. His condition deteriorated. He was not able to practice as a lawyer from mid-July to mid-October 2018 because of his medical condition. He returned to practice but has not earned as much as he did before these events.
- [16] In summary, Mr. Samra asks the court to find there was a negligent misrepresentation. He says he must be put in the position he would have been in had the misrepresentation not been made.
- [17] If negligent misrepresentation is not established, Mr. Samra asks the court to find there was an innocent misrepresentation and order the return of his deposit.

[18] Mr. Samra also claims for intentional and/or negligent infliction of mental suffering/emotional distress.

[19] Mr. Samra seeks damages of:

1. \$200,000 in non-pecuniary damages
2. \$144,750 for past wage loss
3. \$1,118,000 for future wage loss
4. Special damages
5. Aggravated damages of \$20,000

Issues

1. Appropriateness for Summary Trial;
2. Negligent Misrepresentation;
3. Innocent Misrepresentation;
4. Intentional and/or negligent infliction of mental suffering; and
5. Miscellaneous Claims

Appropriateness of Summary Trial

[20] Both of the parties take the position that it is appropriate to deal with their application by way of summary trial. The defendant Mr. Jhaj takes the view that the action can be dismissed by way of summary trial, but that Mr. Samra's claims could not be granted without a full trial.

[21] It is my view that the matter can be dismissed by way of summary trial. The onus remains on Mr. Samra to establish his claims: *Gichuru v. Pallai*, 2013 BCCA 60 at para. 35. He has not done so. There is no real dispute with respect to the necessary underlying facts. I am satisfied that the action can be dismissed on the evidence before me. It is the position of the defendant that the action must be dismissed in law because the plaintiff's claims are fatally flawed. This does not depend on a determination of credibility or other assessment of the evidence per se.

Negligent Misrepresentation

[22] Mr. Samra argues that Mr. Jhaj made a negligent misrepresentation of the square footage of the unit which resulted in the damages which he seeks.

[23] The parties agree that the elements for negligent misrepresentation are set out in *Queen v. Cognos Inc.*, [1993] 1 S.C.R. 87. These are:

1. There must be a duty of care based on a special relationship between the representor and the representee;
 2. The representation must be untrue, inaccurate or misleading;
 3. The representor must have acted negligently in making the misrepresentation;
 4. The representee must have reasonably relied on the negligent misrepresentation; and
 5. The reliance must be detrimental to the representee in the sense that damages resulted.
- [24] Although I have some doubt as to whether the plaintiff can establish a special relationship between Mr. Jhaj and himself, given that Mr. Jhaj was agent for the vendor, I am satisfied that the plaintiff cannot make out other elements of this claim.
- [25] Mr. Jhaj concedes that the square footage in the listing was inaccurate.
- [26] There is no evidence that Mr. Jhaj acted negligently in making the misrepresentation. He measured the plans to determine the square footage. I do not have any evidence from any other real estate agent as to the usual conduct of a real estate agent in determining the square footage of a property. There is no evidence to persuade me that Mr. Jhaj acted negligently.
- [27] Secondly, I am not persuaded that Mr. Samra reasonably relied on the misrepresentation. In this regard, he personally viewed the property and determined that it was acceptable for its intended use. The size of the property is obvious and investigating the property to determine its square footage would normally be something that a purchaser would undertake.
- [28] Moreover, in this case the multiple listing stated that "Information herein deemed reliable but not guaranteed". This is sufficient to put the purchaser on notice that the information may not be accurate. If the purchaser wished to verify the information, he may do so. It is not reasonable for him to rely on the square footage as stated in the listing when it is specifically stated that it is not guaranteed.
- [29] Finally, I am not persuaded that the reliance was detrimental to Mr. Samra in the sense that the property was worth less than he offered. The property was sold very shortly afterward for \$670,000. This is a difference of less than 1%. I am simply not persuaded that there was any loss in the property purchase that flowed from the misrepresentation, assuming that a misrepresentation can be made out.
- [30] Mr. Samra has stressed after the fact that the square footage of the office was of great importance to him. However, Mr. Samra could not recall whether he requested verification of the size of the unit before signing the contract and the contract does not contain any terms concerning the square footage of the property.

[31] The most significant aspect of Mr. Samra's claim however flows from his mental health crisis and the loss to his practice. In this regard, it is my view that, even if Mr. Samra had established negligent misrepresentation, his damages were not foreseeable.

[32] This issue was addressed by the Supreme Court of Canada in *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 ["Mustapha"]:

11 The fourth and final question to address in a negligence claim is whether the defendant's breach caused the plaintiff's harm in fact and in law. The evidence before the trial judge establishes that the defendant's breach of its duty of care in fact caused Mr. Mustapha's psychiatric injury. We are not asked to revisit this conclusion. The remaining question is whether that breach also caused the plaintiff's damage in law or whether it is too remote to warrant recovery.

12 The remoteness inquiry asks whether "the harm [is] too unrelated to the wrongful conduct to hold the defendant fairly liable" (*Linden and Feldthusen*, at p. 360). Since *The Wagon Mound* (No. 1), the principle has been that "it is the foresight of the reasonable man which alone can determine responsibility" (*Overseas Tankship (U.K.) Ltd. v. Morts Dock & Engineering Co.*, [1961] A.C. 388 (P.C.), at p. 424).

13 Much has been written on how probable or likely a harm needs to be in order to be considered reasonably foreseeable. The parties raise the question of whether a reasonably foreseeable harm is one whose occurrence is probable or merely possible. In my view, these terms are misleading. Any harm which has actually occurred is "possible"; it is therefore clear that possibility alone does not provide a meaningful standard for the application of reasonable foreseeability. The degree of probability that would satisfy the reasonable foreseeability requirement was described in *The Wagon Mound* (No. 2) as a "real risk", i.e. "one which would occur to the mind of a reasonable man in the position of the defendant ... and which he would not brush aside as far-fetched" (*Overseas Tankship (U.K.) Ltd. v. Miller Steamship Co. Pty.*, [1967] A.C. 617, at p. 643).

14 The remoteness inquiry depends not only upon the degree of probability required to meet the reasonable foreseeability requirement, but also upon whether or not the plaintiff is considered objectively or subjectively. One of the questions that arose in this case was whether, in judging whether the personal injury was foreseeable, one looks at a person of "ordinary fortitude" or at a particular plaintiff with his or her particular vulnerabilities. This question may be acute in claims for mental injury, since there is a wide variation in how particular people respond to particular stressors. The law has consistently held - albeit within the duty of care analysis - that the question is what a person of ordinary fortitude would suffer: see *White v. Chief Constable of South Yorkshire Police*, [1998] 3 W.L.R. 1509 (H.L.); *Devji v. Burnaby (District)* (1999), 180 D.L.R. (4th) 205, 1999 BCCA 599; *Vanek*. As stated in *White*, at p. 1512: "The law expects reasonable fortitude and robustness of its citizens and will not impose liability for the exceptional frailty of certain individuals."

...

16 To say this is not to marginalize or penalize those particularly vulnerable to mental injury. It is merely to confirm that the law of tort imposes an obligation to compensate for any harm done on the basis of reasonable foresight, not as insurance. The law of negligence seeks to impose a result that is fair to both plaintiffs and defendants, and that is socially useful. In this quest, it draws the line for compensability of damage, not at perfection, but at reasonable foreseeability. Once a plaintiff establishes the foreseeability that a mental injury would occur in a person of ordinary fortitude, by contrast, the defendant must take the plaintiff as it finds him for purposes of damages. As stated in *White*, at p. 1512, focusing on the person of ordinary fortitude for the purposes of determining foreseeability "is not to be confused with the 'eggshell skull' situation, where as a result of a breach of duty the damage inflicted proves to be more serious than expected". Rather, it is a threshold test for establishing compensability of damages at law.

- [33] The question of whether the misrepresentation caused Mr. Samra's medical deterioration in fact cannot be determined on this application. There is conflicting evidence on this point. However, I am satisfied that Mr. Samra's damage is too remote to warrant recovery.
- [34] As is indicated in *Mustapha* the law expects reasonable fortitude and robustness of its citizens and will not impose liability for exceptional frailty of certain individuals. Assuming that Mr. Samra's loss was caused by the representation, Mr. Samra did not have the reasonable fortitude and robustness of most citizens. His vulnerability and frailty were exceptional. The response that he had was not foreseeable.
- [35] Mr. Jhaj was not aware that Mr. Samra was psychiatrically or psychologically vulnerable. There is no evidence that he was aware of Mr. Samra's particular condition. It is not foreseeable that the circumstances of this case would result in the harm suffered by Mr. Samra. Mr. Samra asked for a reduced purchase price or return of his deposit on June 25. On June 26 Mr. Jhaj advised Mr. Samra that he could have his deposit back if he signed the requisite documents. Mr. Samra was not willing to do so. There was nothing to suggest that Mr. Samra would suffer any loss because of the representation.
- [36] This foreseeability requirement applies equally to negligent misrepresentation as to other forms of negligence: *Feldstein v. 364 Northern Development Corporation*, 2017 BCCA 174 at para. 78.

Innocent Misrepresentation

- [37] Mr. Samra argued, in the alternative, that if the court finds only an innocent misrepresentation, he should be entitled to return of his deposit.
- [38] I am satisfied that Mr. Jhaj, as the real estate agent in this case, who had no contract with Mr. Samra, cannot be liable for the return of the deposit. Mr. Samra's claims against the other parties to this action, who would include the vendor in this case, were dismissed by consent order on October 18, 2019.

- [39] Mr. Samra says, at another point, that regardless of whether the misrepresentation was fraudulent, negligent or innocent the agreement should be rescinded based on the legal doctrine of rescission. This claim can be similarly dealt with. Mr. Samra did not have a contract with Mr. Jhaj, the remaining defendant, and there can be no contractual remedy.

Intentional or Negligent Infliction of Mental/Emotional Suffering

- [40] Mr. Samra also says that Mr. Jhaj is responsible for intentional or negligent infliction of mental suffering. Here he refers to Mr. Jhaj's email where Mr. Jhaj said:

If you failed to sign Legal Fraser Valley Real Estate Board documents we cannot give you your deposit back as that would mean the deal is still active and you are going to provide my sellers with the remaining balance of \$675,000 minus the deposit paid. This documents were sent to you as a convenience and courtesy for you to review before tomorrow to save time and again based on goodwill. We will have them filled out before you sign. So I request we stop playing all the games and we all get back to business and you sign these documents, collect your deposit and we move on. My sellers are working with you at every point let's be reasonable and resolve this and not waste any more of anyone's time.

- [41] Mr. Samra asserts that the reference to "playing games" indicates that Mr. Jhaj intentionally inflicted mental suffering and emotional distress. He refers to a number of cases, including *Johnson v. Smith*, 2018 BCSC 836 [Johnson]. In *Johnson* Mr. Justice Butler summarized a claim for intentional infliction of mental suffering and said:
- [34] To establish a claim for intentional infliction of mental suffering, a plaintiff must plead the following material facts: flagrant or outrageous conduct by the defendants that was calculated to harm the plaintiff; and which caused the plaintiff to suffer a visible and provable medical illness: *Frame v. Smith*, [1987] 2 S.C.R. 99 at 127-128.
- [35] The tort has received limited consideration in Canada but is in the nature of a personal injury claim: *Edgar v. The British Columbia Institute of Technology*, 2015 BCSC 710 at para. 38. The defendants' conduct must be shown to be intentional; reckless indifference is insufficient to establish liability: *Piresferreira v. Ayotte*, 2010 ONCA 384 at para. 75.
- [42] There is no evidence in this case that could constitute flagrant or outrageous conduct by Mr. Jhaj that was calculated to harm Mr. Samra. A passing reference to "playing games" is not outrageous nor is there evidence that by using these words Mr. Jhaj intended to harm Mr. Samra. This claim could not succeed.

Miscellaneous Claims

- [43] As indicated above, Mr. Samra references a number of different concepts under the Legal Basis portion of his application.
- [44] First, Mr. Samra makes reference to nervous shock. Nervous shock is not a claim, it is a description of the damage received as a result of a tort. No tort has been established.

- [45] Mr. Samra asserts joint liability and vicarious liability. As I have noted, Samra's action against the other defendants has been dismissed. I do not see that Mr. Jhaj could be vicariously or jointly and severally liable for damages.
- [46] Accordingly, Mr. Samra's action is dismissed with costs to Mr. Jhaj. Although Mr. Jhaj has sought special costs, there is nothing in this action of such an outrageous nature as to merit special costs against Mr. Samra.

"B.J. Brown J."

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