

CANADA / JUDGMENT

Skeena Disposal Co. Ltd., v. Griffin Fish Ltd.

2018 BCSC 1426

COURT

Supreme Court of British Columbia

DECIDED

23 August 2018

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2018 BCSC 1426 Skeena Disposal Co. Ltd. v. Griffin Fish Ltd. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Skeena Disposal Co. Ltd. v. Griffin Fish Ltd., 2018 BCSC 1426 Date: 20180823 Docket: S105623 Registry: Kelowna Between: Skeena Disposal Co. Ltd., and Matthew Robert Pederson Plaintiffs And Griffin Fish Ltd., 543497 B.C. Ltd., Paul M. Johnston Law Corporation carrying on business as Johnston Law Office and George Marcus Griffin Defendants Before: The Honourable Mr. Justice Jenkins Reasons for Judgment Counsel for Plaintiffs: T.P. Matte Counsel for Griffin Fish Ltd., and George Marcus Griffin: S. Schwartz Counsel for Paul M. Johnston Law Corporation: A.G. Sandilands Place and Date of Hearing: Kelowna, B.C. March 8 and 9, 2018 Place and Date of Judgment: Kelowna, B.C. August 23, 2018

Introduction

- [1] These reasons address the application for an order that \$383,496.11 be paid to the applicant, Paul M. Johnston Person Law Corporation ("JLC"), from funds held in trust by Matte-Stevens-Guille LLP ("MSG"). JLC submits this sum is the amount owing in outstanding legal fees and disbursements owed to them for work done for Griffin Fish Ltd. ("Griffin Ltd"), Mr. Griffin, and other related companies (collectively referred to as "the companies"). The funds in trust are also the subject of a dispute between Skeena Disposal Co. Ltd. ("Skeena Ltd.") and Griffin Ltd.
- [2] The applicants also seek costs on this application.

Background

- [3] In reasons for judgement issued on July 27, 2018, indexed at 2018 BCSC 1267, I dismissed an application by Skeena Ltd. for payment out of a portion of the funds in trust and directed a trial on the issue of entitlement to the funds.

- [4] The principle dispute at issue in this action relates to the liquidation of the defendant 543497 B.C. Ltd. ("497"). 497 was incorporated to own and develop what turned out to be a failed real estate development in Prince Rupert, BC. The property was sold for \$3.6 million, which is currently being held in the trust mentioned above. The plaintiff, Skeena Ltd., and the defendant, Griffin Ltd., were equal shareholders in 497.
- [5] On or about November 15, 2002, Griffin Ltd. entered into an agreement with Punnett and Johnston ("P&J") for the provision of legal services. (JLC is the successor to the law firm P&J). On August 22, 2006, Griffin Ltd. assigned its Shareholder Account in 497 to P&J. On August 26, 2006, Griffin Ltd. provided a General Security Agreement (GSA") with P&J to secure monies for which P&J was owed. It was entered into the Personal Property Registry ("PPR"). JLC submits that Skeena Ltd. was notified before the granting of the GSA of Griffin Ltd.'s intent to grant the security, and was notified after the assignment had been taken place.
- [6] At issue is whether JLC can recover the fees owed out of the trust monies prior to a final accounting of the monies owed to each shareholder of 497. Position of the Parties Skeena Ltd.
- [7] Skeena Ltd. raises several arguments as to why JLC's application should be dismissed.
- [8] First, Skeena Ltd. submits that JLC has failed to prove ownership of any accounts receivable from the companies guaranteed by Griffin Ltd. so far as it has failed to show, on the dissolution of P&J that JLC became entitled to P&J's accounts receivable.
- [9] Second, and in the alternative, if JLC does own the accounts receivable, Skeena Ltd. submits that JLC has failed to prove that the amounts alleged are actually owing because some, or all of the amounts claimed, are likely no longer enforceable debts as a result of the Limitation Act, S.B.C. 2012 c. 13 [the "Act"], particularly with respect to the amounts allegedly owing by Eco-Logical Forest Products Ltd. and 452341 B.C. Ltd (two companies of which Mr. Griffin was also the principal).
- [10] Third, if JLC does own the accounts receivable and the alleged guarantees exist, it is likely that nothing is owing by the guarantor because the underlying debts involved have ceased to exist. Skeena Ltd. cites Business Development Bank of Canada v. Papke, 2003 BCSC 1179, aff'd on other grounds, 2005 BCCA 272.
- [11] Fourth, and somewhat confusingly, Skeena Ltd. argues that JLC has overcharged on interest so far as it has charged interest on the outstanding invoice amounts plus interest. Skeen Ltd. takes issue with this despite the fact that the interest provision provides for interest charges compounding annually (see Affidavit #3, Exhibit "A"). JLC
- [12] JLC submits the debt owing to it arises from the fact that P&J (now JLC) acted for the companies controlled by Mr. Griffin. Griffin Ltd. guaranteed the law firm's accounts with each company.

- [13] JLC submits it holds a valid security by way of the GSA which specifically charges the shareholder account payable to Griffin Ltd. by 497. They submit it remains validly registered in the PPR.
- [14] JLC submits the GSA constitutes "notice to the world", and therefore Skeena Ltd., of JLC's interest in the shareholder loan.
- [15] JLC submits that after Griffin Ltd. granted JLC the security, it could not have granted a further interest in the shareholder loan to anyone else, unless that party fell below JLC in priority.
- [16] Further, JLC submits Skeena Ltd. has failed to provide an adequate accounting of what it says it is owed by Griffin Ltd. or 497. In addition, they also argue that Skeena Ltd. has failed to account for payments received as required by the order of Hyslop J. on January 21, 2015.
- [17] In support of the sums owing, Paul M. Johnston ("Mr. Johnston") swore multiple affidavits. His February 28, 2018, Affidavit (Affidavit #3") contained multiple Exhibits evidencing the debt owed by the companies (and therefore Griffin Ltd.) to JLC. He deposed that as of January 31, 2018, \$423,891.26 was owed to JLC. At para. 11 of Affidavit #3, he deposed that he and Mr. Griffin had multiple conversations about the outstanding fees as the companies' financial positions worsened. He deposed that Mr. Griffin assured him that the fees would be paid when the property owned by 497 was sold. It is for this reason JLC did not take legal action to collect the fees until the property was sold. Griffin Ltd.
- [18] Griffin Ltd. filed an application response in which they took no position with respect to JLC's claim of entitlement, they do however dispute the quantum claimed by JLC. As such, they request that the funds currently being held in trust by Skeena Ltd.'s counsel remain there pending the determination of the issues at trial.
- [19] They submit that the distribution of any funds out of the trust prior to the finalization of the amounts owing would amount to a premature determination of the legal issues without providing Griffin Ltd. the opportunity to obtain document disclosure and examine Skeena Ltd. and JLC.

Conclusion

- [20] For the following reasons, the court declines to make the order sought by JLC:
- i. Griffin Ltd. disputes the amount of legal fees owing; and ii. There are issues between the parties as to whether some of the claims have lapsed under the Act.
- [21] Additionally, similarly to my previous reasons, allowing for disbursements out of trust to either shareholder (or their beneficiaries) would be premature as there are still unresolved items in the accounting and claims which may or may not affect the amount of the shareholder's loans to be repaid from the funds in trust.

- [22] Specifically, as noted at para. 17 (viii) of the reasons: viii. Johnston Law, through the affidavit of Paul Johnston of January 10, 2018, deposed:
9. Based on my review of the Affidavits it is clear that Mr. Pederson seeks to have alleged liabilities accrued or incurred by Griffin Fish Ltd. and/or George Marcus Griffin satisfied out of the sale proceeds of the property of [497]. Any of the debts he alleges are due to him from Griffin Fish Ltd. or Marcus Griffin are not debts of [497] and are not set forth in [497's] financial statements.
 10. The effect therefore is that Mr. Pederson is seeking to have his unsecured alleged debts due from Griffin Fish Ltd. and/or Marcus Griffin satisfied in priority to my secured accounts. As such, it needs to be determined which advances were made from Skeena Ltd. to Griffin Ltd. and which were made to 497.
- [23] There is also a dispute between the parties regarding a contribution of \$35,000 allegedly made by Mr. Johnstone on behalf of the parties for property taxes owing on the property. While Skeena Ltd. admits it agreed to give this loan priority, Skeena Ltd. submits there is a dearth of evidence as to whether Mr. Johnstone actually made the loan himself, as per the agreement.
- [24] It is clear there are outstanding issues regarding whether or not all of the debts claimed by Skeena Ltd. are owed by 497, and what amounts, if any are owing to Mr. Johnstone. A trial is necessary to resolve the existing debts between the parties. Until the accounting is finalized, no funds shall be disbursed from the trust funds.
- [25] This application is dismissed.
- [26] Costs in the cause. "Jenkins J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/18/14/2018BCSC1426.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/skeena-disposal-co-ltd-v-griffin-fish-ltd-2018-bcsc-1426>

Prepared on 28 October 2026 · Esheria