

CANADA / JUDGMENT

Skura v. Schonfeld

2018 BCSC 1730

COURT

Supreme Court of British Columbia

DECIDED

10 October 2018

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2018 BCSC 1730 Skura v. Schonfeld IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Skura v. Schonfeld, 2018 BCSC 1730 Date: 20181010 Docket: 103237 Registry: Kelowna Between: Cameron Skura Plaintiff And Roland Schonfeld & Willex Metalworks Ltd. Defendants Before: The Honourable Mr. Justice Dley Reasons for Judgment Counsel for the Plaintiff: W. Thiessen Counsel for the Defendants: S.R. Andersen Place and Date of Hearing: Kelowna, B.C. September 14, 2018 Place and Date of Judgment: Kelowna, B.C. October 10, 2018

Introduction

- [1] Mr. Schonfeld did not respond to the Notice of Civil Claim in this action. As a result, Mr. Skura took default judgment. Mr. Schonfeld subsequently filed for bankruptcy and has now been discharged.
- [2] Mr. Skura applies under s. 178(1)(e) of the Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3 [Act] seeking a declaration that the discharge from bankruptcy does not release Mr. Schonfeld from the amount of the default judgment because the default judgment was for a debt that arose from obtaining property and services by fraud or deceitful behaviour. Mr. Skura's pleadings did not allege fraud.
- [3] For the reasons that follow, the application is dismissed. Background Facts
- [4] Mr. Schonfeld was the operating mind of Willex Metalworks Ltd ("Willex"). As a result of various representations, Mr. Skura invested money and labour into Willex. He was promised shares and payment. When the representations were not completed, Mr. Skura commenced this action alleging breach of contract.
- [5] The pleadings allege that:
- Mr. Skura relied, to his detriment on misrepresentations made by the defendants;
 - The defendants committed a breach of contract;
 - The defendants have been unjustly enriched;
 - The defendants intentionally interfered with Mr. Skura's economic interests; and

- e) Willex was the alter ego of Mr. Schonfeld and he failed to provide share certificates, financial statements or notices of any meetings.
- [6] Mr. Skura sought the following orders against the defendants jointly and severally:
 - a) That the defendants pay \$158,286.79 for loans and expenses, and \$28,148.00 for services rendered;
 - b) That the defendants hold any property acquired or maintained with loans from Mr. Skura in trust for him;
 - c) Restitution for unjust enrichment;
 - d) Damages for breach of contract; and
 - e) Interest and costs.
- [7] Mr. Schonfeld did not defend the action and Mr. Skura obtained a default judgment for \$186,659.53.
- [8] Mr. Schonfeld made an assignment in bankruptcy. His total debt, entirely unsecured, was \$512,499. Mr. Schonfeld has now been discharged from bankruptcy. Mr. Skura's judgment remains unpaid.
- [9] Mr. Skura seeks an order that his default judgment survive the bankruptcy discharge. He relies on s. 178(1)(e) of the Act which states: 178 (1) An order of discharge does not release the bankrupt from
 - (e) any debt or liability resulting from obtaining property or services by false pretences or fraudulent misrepresentation, other than a debt or liability that arises from an equity claim;The Law
- [10] A debt that arises out of deceitful conduct consisting of false pretenses or fraudulent conduct survives bankruptcy: *Cruise Connections Canada v. Szeto*, 2015 BCCA 363 at para. 13.
- [11] The purpose of s. 178(1) of the Act is to impose a moral sanction on a bankrupt and to prevent him or her from using bankruptcy protection to avoid the consequences of fraudulent conduct: *Cruise Connections* at paras. 14-15.
- [12] In *Cruise Connections* at paras. 20-29, the Court referred to its previous decision in *H.Y. Louie Co. Limited v. Bowick*, 2015 BCCA 256 (at paras. 82-88) to state the principles to be followed in characterizing a judgment to determine whether it fell within the s. 178(1) exception:
 - a) a court may look at the pleadings and circumstances giving rise to the judgment;
 - b) where a defendant consents to judgment, a court "should be loath" to characterize a judgment where allegations of fraud are not pleaded; and

- c) it is an abuse of process for a plaintiff to secure a judgment based on pleadings that are absent allegations of fraud, and then to seek a re-characterization of the judgment that gains the benefit of the s. 178 (1) exception. Discussion
- [13] It is apparent from looking at the whole of the Notice of Civil Claim that this action was based on a breach of contract and misrepresentation. There was no allegation of fraud or deceitful behaviour.
- [14] Mr. Skura conceded that one of the reasons why fraud was not alleged, was because of the costs consequences in the event of an unsuccessful allegation.
- [15] It is trite to say that a litigant is entitled to know the case that is being alleged against him or her. That requires the plaintiff to describe the facts and legal basis upon which the relief is claimed. A defendant may choose not to defend a claim based on the allegations made. Once a defendant chooses to accept the pleadings and does not take issue, the plaintiff is at liberty to take judgment. That is precisely what occurred here. Mr. Schonfeld did not dispute the allegations made.
- [16] However, Mr. Schonfeld did not fail to take issue with fraud or deceitful conduct because those allegations were never made. A defendant should not be compelled to guess at the underlying motive behind pleadings in order to determine whether an action is to be defended.
- [17] Rule 3-7 (18) of the Supreme Court Civil Rules, B.C. Reg. 168/2009 [Civil Rules] requires that a claim in fraud must be pled with precision and particularity.
- [18] To require a defendant to file a boilerplate defence to all possible causes of action, whether pleaded or not, would defeat the intent of the Civil Rules that require a focused and responsive set of pleadings. This is the type of circumstance described as an abuse of process in *Cruise Connections* at para. 28: H.Y. Louie stands for the following proposition: It is an abuse of process for a plaintiff to "trap" a defendant, whether intentionally or not, into consenting to a judgment with certain long-term consequences, and then subsequently apply to a court to re-characterize that judgment so that it has more severe consequences than those previously on the table (such as surviving bankruptcy),
- [19] If Mr. Skura regarded Mr. Schonfeld's conduct to be deceitful, he should have alleged it in his claim. The sanction of special costs for a failed claim framed as fraud is designed to discourage unwarranted allegations of such a serious nature. If a litigant is confident that he has been defrauded or the subject of deceitful behaviour, then the costs issue should not become a deterrent and will be of no consequence.
- [20] The pleadings do not establish a claim for fraudulent misrepresentation, obtaining property or services under false pretenses or fraud. The default judgment does not, therefore, admit to this kind of reprehensible conduct. The result is, that Mr. Skura has failed to show that his default judgment survives Mr. Schonfeld's bankruptcy.

Conclusion

[21] Mr. Skura's application for a declaration that his default judgment dated July 8, 2014 survives Mr. Schonfeld's bankruptcy is dismissed with costs at Scale B. "S.D. Dley J." DLEY J.

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