

CANADA / JUDGMENT

Stevenson v. Smith

2007 BCSC 2007

COURT

Supreme Court of British Columbia

DECIDED

29 August 2007

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2007 BCSC 2007 Stevenson v. Smith IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Stevenson v. Smith, 2007 BCSC 2007 Date: 20070829 Docket: 04-4215 Registry: Victoria Between: Gerry Stevenson Plaintiff And: Robert Smith Defendant And: Harold J. Rusk Third Party Before: Master McCallum Oral Reasons for Judgment In Chambers August 29, 2007 Counsel for the Plaintiff: M. Giri (as agent) Appearing on his own behalf: Robert Smith Counsel for the Third Party: L. Wood Place of Trial/Hearing: Victoria, B.C.

- [1] THE COURT: This is an application to strike out a third party notice. The underlying facts are convoluted to some extent, but for the purpose of this application straightforward.
- [2] The plaintiff in this action, Stevenson, sued Mr. Smith. That had something to do with inducement to breach a contract. Mr. Smith third partied Harold Rusk, who was counsel for Mr. Stevenson, the plaintiff in the proceeding.
- [3] I do not have the third party notice here. Nothing turns on that. Mr. Smith made allegations against Mr. Rusk, presumably as required by Rule 22, to support the issuing of the third party notice. He could not have claimed contribution and indemnity. He must have claimed some relief against him relating to or connected with the original subject matter, or that a question or issue relating to or connected to the relief claimed in the action should have been determined in the original proceeding.
- [4] In any event, all of that became moot when the plaintiff discontinued the proceeding against Mr. Smith. That, on its own, is enough to warrant the striking of the third party notice. A third party notice can be filed, as counsel for the third party said, by a party of record who is not a plaintiff. Mr. Smith, for purposes of this application, does not fall in that category, a party of record who is not a plaintiff. The only status he has in this proceeding now is as a plaintiff in a counterclaim he brought against Mr. Stevenson. That proceeding is still outstanding, and he can prosecute that, but that does not support the issuing of a third party claim against Mr. Rusk. So, as I say, for that reason alone, the third party notice has to be struck.

- [5] If that were not the case, even if the original action were outstanding, then I say the third party claim would be struck in any event, under Rule 19, because there is no reasonable cause of action disclosed in that, even as counsel for the third party said, assuming that all of the allegations are true, Mr. Smith cannot succeed in this claim against Mr. Rusk.
- [6] Mr. Smith complains so far as I can see, quite without justification that Mr. Rusk acted outside the law or against the law in filing a falsified builders lien claim. Even assuming that were true, the lien claim in question involved not Mr. Smith but Mr. Smith's daughter and son-in-law. Mr. Smith was a stranger to the litigation that Stevenson originally commenced, with Mr. Rusk as his counsel, for recovery of the damages he said he was owed as a result of the filing of the builders lien. None of that had anything to do with Mr. Smith.
- [7] The allegations in this proceeding against Mr. Rusk for actions that Mr. Rusk may or may not have taken but, for today's purposes, assuming he did take, in the context in which that is set out, would not, in any event, support the third party claim. Mr. Smith could not succeed against Mr. Rusk. Mr. Smith, as is clear from the authorities referred to by counsel for the third party, has no cause of action against Mr. Rusk.
- [8] The facts are very similar to those in *Crooks v. Manolescu*, Master Bolton's decision, and the reference in *Lawrence v. Sandilands*. The only party to whom a solicitor owes an actionable duty is his or her client, and Mr. Smith was not his or her client. Even assuming, as Mr. Smith says, that that implies the solicitor must have acted within the law, whatever that means, that would not support Mr. Smith's suggestion, because Mr. Smith, as I said, was a stranger to all of this litigation and had nothing to do with Mr. Rusk or Mr. Stevenson, for that matter.
- [9] The third party notice is struck. [SUBMISSIONS RE COSTS]
- [10] THE COURT: Then with respect to costs, the third party is entitled to his costs against Mr. Smith for the third party proceeding. Those costs should include the costs of today's application as special costs. Mr. Smith had every opportunity to avoid the hearing. The result was a foregone conclusion.
- [11] Costs on a party/party basis with respect to the third party proceeding, whatever that amounts to, and the costs of today as special costs.
- [12] I will dispense with Mr. Smith's approval of the order.
- [13] Ms. Wood, I will ask that you see that a copy of the order, once it has been entered, goes to him. Master William McCallum

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