

CANADA / JUDGMENT

Tafti v. Davis

2020 BCSC 507

COURT

Supreme Court of British Columbia

DECIDED

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2020 BCSC 507 Tafti v. Davis

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Tafti v. Davis,

2020 BCSC 507

Date: 20200402

Docket: S175641

Registry: Vancouver

Between:

Mehdi Alaei Tafti

Plaintiff

And

Alan Davis, John Davies,

and the Owners, Strata Plan LMS 1866

Defendant

Before: The Honourable Madam Justice Iyer

Reasons for Judgment

The Plaintiff, appearing in person:

A. Tafti

Counsel for Defendant:

J. Rees

L. Peretz, Articled Student

Place and Date of Hearing:

Vancouver, B.C.

February 14, 2020

Place and Date of Judgment:

Vancouver, B.C.

April 2, 2020

INTRODUCTION

- [1] This application arises out of a civil claim filed by Mehdi Tafti against the corporate defendant, Owners Strata Plan LMS 1866 ("Strata Corporation"). The Strata Corporation relates to the Electra Building in downtown Vancouver, and consists of a commercial section and a residential section. The individual defendants are Alan Davis, an employee of the Strata Corporation, and John Davies, a commercial unit owner, member of the commercial section executive and member of the Strata Corporation's council ("Strata Council"). Mr. Tafti owns a residential unit and is therefore a member of the strata's residential section.
- [2] Mr. Tafti initially sued the defendants in provincial court in May 2015, seeking damages for an injury to his foot that occurred during an altercation with Mr. Davis in May 2013. The action was transferred to this court in June 2017. Since then, there have been a number of interlocutory applications: the defendants applied to strike aspects of the notice of civil claim and the amended notices of civil claim; Mr. Tafti has sought various orders, including addition of parties, further amendments to his pleading, production of document lists, declaratory and injunctive relief, and monetary awards. As a result, Mr. Tafti's claim now consists of a claim under the Strata Property Act, S.B.C. 1998, c. 43 ("Act") for relief from oppression by the commercial section as well as his original personal injury claim. The defendants have produced their list of documents. Discoveries of Mr. Tafti, Mr. Davies and the Strata Corporation's representative have occurred.
- [3] Mr. Tafti now applies for the following orders:
- a) to compel answers to questions not answered in discovery, either by further discovery or by interrogatories;
 - b) for production of various categories of additional documents;
 - c) for a listing of each individual document over which privilege is claimed;
 - d) for an affidavit attesting to the accuracy and completeness of the Strata Corporation's list of documents;

- e) for an interlocutory audit of the Strata Corporation's finances; and
 - f) for leave to further amend his further amended notice of civil claim.
- [4] The defendants consent to very limited aspects of some of the orders Mr. Tafti seeks. They object to the bulk of his application on the basis that what he seeks is not relevant to an issue in the litigation because of previous orders striking paragraphs from his pleadings.
- [5] The hearing of the application was set for two hours, but it quickly became apparent that the time estimate was inadequate. I gave Mr. Tafti the option of adjourning and re-setting his application for the two days it would likely require or proceeding in the time available, which was just over three hours. He chose the latter and I apportioned time between the parties.
- [6] Below, I address each of the categories of orders sought by Mr. Tafti, bearing in mind that, as a result of previous court orders, Mr. Tafti's only claims against the defendants are the personal injury claim relating to the incident on May 10, 2013, and the oppression claim. The latter is based on s. 164(1) of the Act, which provides:
- 64 (1) On application of an owner or tenant, the Supreme Court may make any interim or final order it considers necessary to prevent or remedy a significantly unfair
- (a) action or threatened action by, or decision of, the strata corporation, including the council, in relation to the owner or tenant, or
 - (b) exercise of voting rights by a person who holds 50% or more of the votes, including proxies, at an annual or special general meeting.
- [7] It is important to note that the residential section is not a party to this action. Mr. Tafti's application to add the residential section as a defendant was denied by Justice Russell on June 5, 2019.

ANSWERS TO DISCOVERY QUESTIONS

- [8] The parties agree that the questions to which Mr. Tafti seeks answers can be dealt with by way of interrogatories. In Appendix "B" to his written submission, Mr. Tafti has set out a list of 15 such questions[1]. The guiding principles are that discovery questions must be relevant to an issue in the litigation, must be clear (that is, not vague, confusing or overbroad) and not call for answers on questions of law: *Forliti (Guardian of) v. Woolley*, 2002 BCSC 858; *Kendall v. Sun Life Assurance Company of Canada*, 2010 BCSC 1556 at paras. 7-18.
- [9] I have reviewed the further amended notice of civil claim, filed on June 7, 2019 ("Current Claim") and the decisions of Justices Steeves, Milman, Brundrett and Russell striking particular paragraphs of previous versions of Mr. Tafti's pleadings.
- [10] Questions 1, 3, 4, 9, 11, and 14 proposed by Mr. Tafti relate to paragraphs that have been struck. Accordingly, they need not be answered.

- [11] Question 2 relates to Mr. Davis' alleged recommendation for outsourcing of bicycle storage. Mr. Tafti says this relates to a paragraph of his Current Claim that alleges that the two individual defendants "regularly harass" him. Even applying the broad test of relevance, Mr. Tafti has not satisfied me that bicycle storage has anything to do with his claims.
- [12] Question 5 has already been answered in the defendants' response to the plaintiff's notice to admit.
- [13] Questions 6-8 relate to Urban Properties Management Ltd. ("UPML"), and advice or information it provided to Strata Council mostly concerning insurance premiums and deductibles. These meet the low threshold of relevance to the oppression claim and should be answered; however, Question 8 should be reworded to limit it to Strata Council: "Did UPML provide advance notice" to Strata Council "of rising insurance premiums and deductibles?"
- [14] Mr. Tafti says that Question 13 relates to Mr. Davies' "fraudulent intent"; however, that claim against Mr. Davies' has been struck, so the question is not relevant.
- [15] Mr. Tafti has not satisfied me of the relevance of Questions 15-17. These questions ask about which Strata Council members had appendices to a particular report, what companies were allowed to bid on a bicycle storage contract, and who told an individual that certain units were commercial (I note that this information is contained in the bylaws). His submission that they relate to his claims of "malfeasance, misfeasance, and restitution" is too general to establish relevance.

REQUESTS FOR PRODUCTION OF DOCUMENTS

- [16] Rule 7-1 of the Supreme Court Civil Rules establishes the tests for production of documents. The Rule creates a two-tiered process: initial disclosure is limited to documents within the party's power or control that could be used by any party to prove or disprove a material fact. Thereafter, a party may demand broader production of any documents relating to a matter in question in the action but must identify the documents sought with reasonable specificity and indicate why the documents should be disclosed: *Eastern Platinum Limited v. Cameron*, 2019 BCSC 1515 at paras. 23-25.
- [17] Mr. Tafti submitted a list of 16 categories of documents (listed in Appendix "A" to his written submission) of which he demanded production in a letter to the defendants dated January 1, 2020. These overlap with paras. 2-7 of the orders sought in his notice of application. For clarity, I will refer to the items as listed in Appendix A.
- [18] Items 1 and 2 are not strictly a demand for production. They seek responses to facts set out in the plaintiff's notice to admit to which the defendants declined to reply on the basis that they relate to the residential section, a non-party whom defendants' counsel do not represent. I have reviewed the notice to admit and the defendants' reply to it. Admissions 6-11, 14-18, 20, 21-27 and 29 relate only to the residential section and need not be answered.

Admissions 1, 12 and 13 need only be answered insofar as they relate to the Strata Corporation as a whole, as neither section is a party.

- [19] Item 3 seeks documents relating to alleged harassment of other individuals on the basis that this constitutes similar fact evidence. Similar fact evidence is presumptively inadmissible. While the presumption is rebuttable, the party seeking to adduce the evidence must show that the intended purpose is not merely to show a general propensity to commit the conduct alleged: *R. v. Handy*, 2002 SCC 56; *Karimi v. Gu*, 2016 BCSC 1060 at paras. 155-156. The plaintiff has not pleaded that the defendants harassed anyone other than himself and has not indicated how the alleged harassment of others could be admissible.
- [20] Item 4 seeks production of communications relating to concessions made to "Mr. Tony Lum and his company." In his explanation, Mr. Tafti identifies the time frame as 2011-2012. I order production of any such communications between the Strata Corporation (not the sections or their representatives) and Mr. Lum/his company in 2011-2012.
- [21] Items 5 and 6 appear to relate to the revision of the residential section's bylaws and are therefore irrelevant.
- [22] Item 7 seeks production of all communications relating to another legal proceeding. Mr. Tafti says these documents are relevant because the relief sought in the Current Claim includes indemnification for judgments and costs against the Strata Corporation "as a result of the impugned conduct." As Mr. Tafti has not explained how this other legal proceeding forms part of the conduct impugned in the Current Claim, he has not established its relevance.
- [23] Item 8 appears to relate to the struck para. 6, and accordingly need not be produced. The plaintiff also seeks "all documents producible under the Strata Property Act". This demand is overbroad and there is no explanation of how the documents relate to the claims in this action. It fails for this reason.
- [24] Item 9 is also overbroad, as it seeks all communications relating to the Strata Corporation's "renewed corporate insurance policy and all other relevant policies." Affidavit #1 of Mr. Davies [The Current Claim does not refer to insurance at all. I find relevance has not been established.
- [25] Item 10 relates only to the residential section's bylaws and is therefore irrelevant.
- [26] Items 11 and 12 are overbroad and need not be answered.
- [27] Item 13 relates to the costs of repair work. The allegations respecting failure to maintain the common property have been struck. Documents in the possession, power or control of the defendants relating to repair and maintenance of the plaintiff's air conditioning unit, his exterior window-washing, and repair of washing machines must be disclosed to the extent that has not already occurred. As elevators are residential property, documents relating to their repair are not subject to production.

- [28] Item 14 (and para. 9 of the Orders Sought) seeks an order requiring the defendants to individually list every document over which privilege is claimed, together with the basis for the claim. The defendants concede that they can list the documents over which privilege is claimed with more precision as to dates and description. In their application response they set out how they propose to amend their list of documents. The proposed amendment satisfies the requirements for listing documents over which privilege is claimed in that the documents are categorized, not "bundled": see *MacLean v. The Great-West Life Assurance Company et al.*, 2004 BCSC 1705. There is no need to order further particularization.
- [29] Item 15 does not appear to seek documents at all. Rather, it states, "the Corporation's privies should be questioned on similar fact evidentiary documents." I do not know what this means. To the extent that it is related to Item 16, which seeks documents related to a HazMat fire on September 17-23, 2010, that allegation has been struck from the plaintiff's claim. Items 15 and 16 need not be answered.

OTHER ORDERS SOUGHT

- [30] Mr. Tafti seeks three other orders. First, he seeks an order requiring the defendants to provide an affidavit attesting to the accuracy of the Strata Corporation's list of documents and that it complies with court orders. Rule 7-1(1) already requires a party to provide a complete list of documents. An affidavit verifying a list of documents should only be ordered when, in the absence of any adequate explanation, relevant documents have been omitted or disclosure has been inadequate": *Gardner v. Viridis Energy Inc.*, 2012 BCSC 1816 at para. 52. The evidence before me does not establish this has occurred.
- [31] Second, Mr. Tafti seeks an "interlocutory audit" of the Strata Corporation's finances based on Exhibits "I" and "J" to his eighth affidavit. The parties agree that this is essentially a request for an interlocutory injunction. The test for such injunctions requires the applicant to show that there is a serious question to be tried, and that the balance of convenience favours granting the injunction, including consideration of irreparable harm to the applicant: *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] S.C.R. 311; *British Columbia (Attorney General) v. Wale* (1986), 9 B.C.L.R. (2d) 333 (C.A.). I agree with the defendants that what is sought here is a mandatory rather than a prohibitive injunction, because it requires positive action. That means that Mr. Tafti must show a strong *prima facie* case that he will succeed at trial, not merely that there is a serious question to be tried: *R. v. Canadian Broadcasting Corp.*, 2018 SCC 5 at para. 18.
- [32] Mr. Tafti's materials do not satisfy any of the three elements of the test. Exhibits "I" and "J" to Mr. Tafti's eighth affidavit are tables relating to insurance coverage and to management, insurance, legal, air conditioning and maintenance fees for certain years based on data provided to strata owners. They do not demonstrate why an audit of the Strata Corporation's finances is necessary at this time. In his oral submissions, Mr. Tafti relied on para. 24 of Justice Milman's reasons. However, in that paragraph, Justice Milman simply allowed Mr. Tafti to include an interlocutory audit in the relief pleaded. He did not say anything about its

merits. I see no basis for ordering an interlocutory audit on the evidence before me.

[33] Third, Mr. Tafti seeks to further amend the Current Claim to plead Bylaw 39.1, which is the current version of Bylaw 35. This is a residential section bylaw and Mr. Tafti cannot advance any claim against the residential section in light of Justice Russell's dismissal of his application to add it as a defendant.

CONCLUSION

[34] In conclusion, I make the following orders:

- a) The defendants must answer questions 6-8 in Appendix "B" to Mr. Tafti's written submissions;
- b) The defendants must produce the following documents in response to the demands set out in Appendix "A" to Mr. Tafti's written submissions:
 - i. Items 1, 12 and 13, but only insofar as the documents relate to the Strata Corporation rather than either of the sections;
 - ii. Communications of the Strata Corporation relating to Mr. Lum and his company with respect to concessions made in 2011-2012;
 - iii. Documents relating to the repair and maintenance of Mr. Tafti's air conditioning unit, his exterior window-washing and washing machine repair to the extent these have not already been disclosed.
- c) The defendants shall amend their List of Documents to list privileged documents in the manner proposed in their application response.

"Iyer J."

[1] The list is numbered 1-17, but question numbers 10 and 12 are missing.

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