

CANADA / JUDGMENT

Tafti v. Davis

2020 BCCA 363

COURT

British Columbia Court of Appeal

DECIDED

17 December 2020

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

2020 BCCA 363 Tafti v. Davis

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Tafti v. Davis,

2020 BCCA 363

Date: 20201217

Docket: CA47104

Between:

Mehdi Alaei Tafti

Appellant

(Plaintiff)

And

Alan Davis, John Davies, and The Owners, Strata Plan LMS 1866

Respondents

(Defendants)

Corrected Judgment: The text of the judgment was corrected at para. 1
on January 15, 2021.

Before:

The Honourable Madam Justice Newbury

(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated June 5, 2019 (Tafti v. Davis, Vancouver Docket S175641).

The Appellant, appearing in person

(via teleconference):

M.A. Tafti

Counsel for the Respondents

(via teleconference):

J.M. Rees

Place and Date of Hearing:

Vancouver, British Columbia

November 23, 2020

Place and Date of Judgment:

Vancouver, British Columbia

December 17, 2020

Written Reasons by:

The Honourable Madam Justice Newbury

Summary:

Application to extend time for filing a notice seeking leave to appeal lower court's order regarding further amendments to pleadings was dismissed. Applying the usual criteria, it was not in the interests of justice, and would be prejudicial to the respondents, to grant the extension. The plaintiff had repeatedly sought to make amendments to his NOCC, had ignored orders dismissing such amendments in whole or in part, and had tried to remake them before other judges of the Supreme Court. It is time to focus on the trial of the existing claims, if they prove not to be statute-barred.

Reasons for Judgment of the Honourable Madam Justice Newbury:

- [1] This case began as a simple personal injury claim in Provincial Court in 2015, but since its transfer to the Supreme Court, it has become stalled in a morass of complex, confusing and repetitious chambers applications regarding amendments the plaintiff wishes to make to his pleadings. Numerous orders have been made, ignored in part or in whole, and remade by other judges. At this point, the underlying action consists of a claim for damages for injuries to one or both of Mr. Tafti's feet, allegedly caused by the individual defendants, for which Mr. Tafti says the defendant strata corporation is vicariously liable; and a statutory oppression action brought against the corporation under s. 164 of the Strata Property Act,

S.B.C. 1998, c. 43. It is apparent that s. 164 relates to acts of oppression against an individual owner. It does not apply to give an owner a cause of action for wrongs suffered by the strata corporation as a whole or by all strata owners or a class thereof. Under the terms of an order of Mr. Justice Steeves, Mr. Tafti was permitted to include in his pleadings "previous incidents outside the limitation period as a matter of a continuation" of his oppression claim.

- [2] I do not intend to set out the entire history of these proceedings here, but the "Procedural History" set out at paras. 5-25 of the defendants' Application Response filed in the Supreme Court on February 10, 2020 is useful. As well, I note para. 6 of the recent reasons for judgment of Mr. Justice Fitch in chambers (Docket CA46901, dated November 9, 2020), in which he recounted:

The underlying action has been burdened by numerous interlocutory applications relating primarily to Mr. Tafti's pleadings. The defendants applied before Justice Steeves in 2017 for an order striking certain paragraphs of Mr. Tafti's notice of civil claim. The application was granted. Justice Steeves characterized the pleadings as prolix and confusing. Mr. Tafti then filed an amended notice of civil claim containing new allegations. The defendants applied again to strike out certain paragraphs of the amended notice of civil claim. The application was allowed in part by Justice Milman, in reasons indexed as 2018 BCSC 2374. Mr. Tafti filed a notice of appeal to this Court from the order made by Milman J. An application to extend time in relation to that appeal was dismissed by Justice Fenlon on January 21, 2019. In May 2019, Mr. Tafti filed a further notice of application in the Supreme Court seeking leave to add the residential section of the strata corporation as a defendant, further amend his pleadings, obtain declaratory and injunctive relief in relation to a residential section bylaw, and damages in the amount of \$3,000 to compensate him for injury to his dignity. A portion of this application came before Justice Brundrett in May 2019. Some amendments were granted by consent. The application for injunctive relief was dismissed. The remainder of this application was heard by Justice Russell in June 2019. As I have noted, Mr. Tafti's application for leave to add the residential section [of the defendant Strata Plan LMS 1866] as a defendant was dismissed as were further amendments to the pleadings sought by Mr. Tafti that had not been addressed by Brundrett J. [At para. 6.]

- [3] Before me is an application by Mr. Tafti to extend the time in which to file a notice seeking leave to appeal a judgment of Russell J. The judgment was pronounced after a hearing in chambers in Supreme Court on June 5, 2019. Russell J. had before her applications to join Section 1 (the Residential Section) of the defendant strata corporation as a defendant, and to amend Mr. Tafti's pleadings in certain respects yet again. She dismissed the application to join Section 1, noting that the limitation defence raised by the defendants appeared to be irrefutable; that no postponement or facts in support of a postponement had been pleaded; and that no explanation of the plaintiff's delay in seeking to join the Section had been given. In summary, she ruled it would not be just and convenient to join it as a defendant. To rule otherwise, she said, "would be to allow a futile amendment to the pleadings which would certainly not survive any limitation challenge." (At para. 2.)

- [4] Russell J. did allow certain amendments which were minor corrections consented to by the defendants; but disallowed paras. 4 (referring to Bylaw 35 of the strata corporation) and 5 (seeking an award of \$3000 for injury to Mr. Tafti's dignity, feelings and self-respect) of the proposed pleading as "conclusory". The claim relating to the Bylaw had already been struck by another judge in chambers on an earlier date.
- [5] Now, 17 months after Russell J.'s order, Mr. Tafti seeks an extension of time. His application is unusual in that it seeks leave to appeal certain paragraphs of her reasons, her order not yet being filed in Supreme Court. However, in his Memorandum of Argument, Mr. Tafti clarified that he seeks to add to his pleading the following:
- 3.
- a. Section 1 of the Corporation has also failed to obtain ownership approval for alterations, repairs and adjustments to common property. Section 1 of the Corporation has also failed to prevent unauthorized alterations, repairs and adjustments to common property;
 - b. The defendants, by their conduct or negligence, have caused significant diminution in value of the plaintiff's property.
4. Declaratory and injunctive relief, to the effect the Residential Bylaw 35 is unenforceable, whereas [because?] it is in violation of s. 121(1)(a) of the Strata Property Act; or, in the alternative, that Bylaw 35 is significantly unfair to the plaintiff, as per s. 164 of the Act; and
5. An award of \$3,000 for the plaintiff to compensate for injury to dignity, feelings and self-respect.
- [6] Mr. Tafti's notice of motion also seeks an order allowing for the hearing of an appeal from a judgment of Madam Justice Iyer pronounced April 2, 2020, to be heard on the same day as the appeal from Russell J.'s order. However, in his reasons referred to above, Fitch J.A. dismissed the application for leave to appeal Iyer J.'s order insofar as it related to limited appeal orders (as defined by R. 2.1 of the Court of Appeal Rules.) Thus only Iyer J.'s dismissal of an application to make certain amendments not involving limited appeal orders remains extant.

Joinder of Residential Section

- [7] The most important feature of the purported appeal from Russell J. is the application to join the Residential Section of the strata corporation as a defendant. A section of a strata corporation may be created pursuant to s. 191 of the Strata Property Act "only for the purpose of representing the different interests of" owners of residential strata lots and non-residential strata lots respectively. Section 194 of the Act states:

Powers and duties of section

194 (1) After the creation of sections, the strata corporation retains its powers and duties in matters of common interest to all the owners.

- (2) With respect to a matter that relates solely to the section, the section is a corporation and has the same powers and duties as the strata corporation
 - (a) to establish its own operating fund and contingency reserve fund for common expenses of the section, including expenses relating to limited common property designated for the exclusive use of all the strata lots in the section,
 - (b) to budget and require section owners to pay strata fees and special levies for expenditures the section authorizes,
 - (c) to sue or arbitrate in the name of the section,
 - (d) to enter into contracts in the name of the section,
 - (e) to acquire and dispose of land and other property in the name of or on behalf of the section, and
 - (f) to enforce bylaws and rules.
- (3) Despite subsection (2), a section must not enter into a contract, or sue or arbitrate, in the name of the strata corporation and the strata corporation has no liability for contracts made, or debts or legal costs incurred, by the section.

[Emphasis added.]

It would appear that Mr. Tafti has been aware for many years of the existence of Section 1, since he was elected as a member of the council of the Residential Section in 2008.

- [8] Rule 6-2(7) of the Supreme Court Civil Rules deals with adding defendants. In general terms, it requires a determination by the court that it would be "just and convenient" to do so. As is well-known, the court usually considers five factors in these circumstances, namely the extent of the delay; the reasons for the delay; any explanation put forward to account for the delay; the degree of prejudice caused by the delay; and the extent of the connection, if any, between existing claims and the proposed new cause of action. (See *Byrd v. Cariboo* (Regional District) 2016 BCCA 69 at para. 31.) Counsel reviewed these in his submissions before Russell J. Although she did not articulate these factors in her necessarily brief reasons, it is reasonable to infer she took them into account.

- [9] Counsel for the defendants also made submissions relating to the effect of a limitation defence raised by a party sought to be added as a defendant. Mr. Rees reviewed with the chambers judge this court's decisions in *Letvad v. Fenwick* 2000 BCCA 630; *The Owners, Strata Plan No. VIS3578 v. John A. Neilson Architects Inc.* 2010 BCCA 329; and *Lui v. West Granville Manor Ltd.* (1987) 11 B.C.L.R. (2d) 273 (C.A) at some length. I reproduce here for convenience paras. 45-48 of John A. Neilson:

Subrule 15(5)(a)(iii) thus establishes two requirements that an applicant must prove to succeed in joining a new defendant. First, it must show that there is a question or issue between the plaintiff and the proposed defendant that relates to the relief, remedy, or subject matter of the proceeding. The threshold is low. It has been expressed as establishing simply that there is a real issue between them that is not frivolous, or that the plaintiff has a possible cause of action against the proposed party. This requirement may be met solely on the basis of proposed amendments to the statement of claim, or the parties may provide affidavit evidence addressing it. If evidence is provided, the court is not to weigh it and assess whether the plaintiff could prove the allegations. It is limited to examining the evidence only to the extent necessary to determine if the required issue between the parties exists: *Strata Plan LMS 1816 v. Acastina Investments Ltd.*, 2004 BCCA 578, 33 B.C.L.R. (4th) 69; *MacMillan Bloedel Ltd. v. Binstead et al.* (1981), 58 B.C.L.R. 173 (C.A.).

If this first requirement is met, the court must next determine whether it would be just and convenient to decide the issue between the parties in this proceeding. This is a discretionary decision, but that discretion is fettered to the extent that it must be exercised judicially, and in accord with the evidence adduced and the guidelines established in the authorities: *Letvad v. Fenwick*, 2000 BCCA 630, 82 B.C.L.R. (3d) 296. At para. 29 of *Letvad*, Esson J.A., writing for the Court, adopted the list of factors to be considered from *Teal Cedar Products (1977) Ltd. v. Dale Intermediaries Ltd.* (1996), 71 B.C.A.C. 161, 19 B.C.L.R. (3d) 282, a decision that dealt with adding further claims under R. 24. These include the extent of the delay, the reasons and any explanation for the delay, any prejudice arising from the delay, and the degree of connection between the existing action and the new parties and claims contemplated. The overriding question is what is just and convenient in the circumstances of the particular case.

The existence of a limitation defence is a relevant, but not determinative, factor in deciding whether to permit joinder, since the effect of s. 4(1)(d) of the Limitation Act is to extinguish such a defence if the proposed defendant is added. In *Brito (Guardian ad litem of) v. Wooley* (1997), 15 C.P.C. (4th) 255, [1997] B.C.J. No. 2487, Joyce J. set out a three step approach to considering a possible limitation defence, which was adopted by this Court in *Strata Plan LMS 1725 v. Star Masonry Ltd.*, 2007 BCCA 611, 73 B.C.L.R. (4th) 154 at para. 12. I summarize it as follows:

1. If it is clear there is no accrued limitation defence, the only question is whether it will be more convenient to have one or two actions since the plaintiff will be able to commence a new action against the proposed defendant if it is unsuccessful in the joinder application.

2. If it is clear there is an accrued limitation defence, the question is whether it will nevertheless be just and convenient to add the party, notwithstanding it will lose that defence. The answer to that question will emerge from consideration of the factors set out in *Letvad*.
3. If the parties disagree as to whether there is an accrued limitation defence, and a court cannot determine this issue on the joinder application, the court should proceed by assuming that there is a limitation defence, and consider whether it is just and convenient to add the party, even though the result will be the elimination of that defence. If that question is answered affirmatively, an order for joinder should be made, and it becomes unnecessary to deal with the limitation issue since it will be extinguished by s. 4(1)(d) of the Limitation Act.

There is also a fourth option, an alternative to the third step, set out by Lambert J.A. in *Lui v. West Granville Manor Ltd.*, [1987] W.W.R. 49, 11 B.C.L.R. (2d) 273 at 303 (C.A.) [Lui No. 2]. He suggested that when the limitation issue could not be determined on the joinder application, and the applicant had not established that considerations of justice and convenience justified extinction of the limitation defence under s. 4(1) of the Limitation Act, judicial discretion could be exercised to permit joinder on terms that the limitation defence would be preserved and determined at trial. That approach was considered and adopted in *Strata Plan No. VR 2000 v. Shaw*, [1998] B.C.J. No. 1086 (S.C.) [Shaw] and *Stone Venepal (Celgar) Pulp Inc. v. IMO Industries (Canada) Inc.*, 2008 BCCA 317, 83 B.C.L.R. (4th) 138. [At paras. 45-48; emphasis added.]

It is apparent, of course, that the Court in these cases was assuming that the existing claims against the existing defendant(s) were not statute-barred. As will be seen below, such an assumption may not necessarily be made in this case.

- [10] Russell J. did not articulate the four alternatives described in the foregoing authorities, but they were clearly before her. She questioned both parties as to whether the Residential Section is a body that may sue and be sued and was assured by both Mr. Tafti and Mr. Rees that it is; however, she received no satisfactory response to her queries as to why it would be necessary to join the Section when it is part of the defendant strata corporation and any remedy granted against the latter would, one assumes, bind the Section. Mr. Tafti reiterated his desire to enjoin the operation of Section 1's Bylaw 35 regarding bicycles in the building (a claim already struck out in Supreme Court) and various complaints about the building as a whole. These are different from the personal claims that already exist and it is difficult to see how they relate to the subject matter or relief already being sought. No material facts were sought to be added in support of them. Further, the existing complaints advanced at para. 9 of the existing pleading are all based on events said to have occurred in April 2012 at the latest and may therefore themselves be time-barred.

Extension of Time in this Court

[11] The criteria for applications to extend the time for seeking leave to appeal or for filing a notice of appeal in this court are as set out in *Davies v. C.I.B.C.* (1987) 15 B.C.L.R. (2d) 256 (C.A.) These are:

- a) Was there a bona fide intention to appeal?
- b) When were the respondents informed of that intention?
- c) Is there merit in the appeal?
- d) Would the respondents be unduly prejudiced by an extension?
- e) Is it in the interests of justice that an extension be granted?

The latter factor is of course the overarching one.

[12] As for the existence of a bona fide intention to appeal and whether the defendants were informed of that intention, it does appear that, as argued by Mr. Rees on behalf of the defendants, they did not become aware of any such intention until October 6, 2020 -- i.e., 15 months after the expiration of the 30-day appeal period. Mr. Tafti did not assert that he had decided any earlier than that date to pursue the appeal. Mr. Rees pointed out that Mr. Tafti is well aware of the applicable timelines in both the Supreme Court and this court, having made many applications of this kind.

[13] As for the merits of the appeal, there is clearly a limitation defence. Again as Mr. Rees points out, the relevant claims would have expired in April 2014; the action was not commenced until a year later and it was not until May 2019 that Mr. Tafti proposed to add the Residential Section as a defendant. He has not sought to plead and has not deposed to, any facts that might result in the postponement of the limitation period. He did seek to rely on *Novak v. Bond* [1999] 1 S.C.R. 808, a case decided under the previous Limitation Act, R.S.B.C. 1996, c. 266. From s. 6(4) thereof, he infers that the running of time is to be postponed until a reasonable person would consider that the plaintiff "ought, in the person's own interests and taking the person's circumstances into account, be able to bring an action." However, he provided no explanation as to why he was not "able to bring" this action as against the Residential Section much earlier than October 2020. (In *Novak v. Bond*, it will be recalled, the plaintiff was undergoing treatment for breast cancer.) I infer that the idea simply had not occurred to Mr. Tafti.

[14] Mr. Tafti also referred to s. 3(1)(k) of the Limitation Act, S.B.C. 2012, c. 13, which states that the Act does not apply to:

- (k) a claim relating to assault or battery, whether or not the claimant's right to bring the court proceeding was at any time governed by a limitation period, if the assault or battery occurred while the claimant

- (i) was a minor, or
- (ii) was living in an intimate and personal relationship with, or was in a relationship of financial, emotional, physical or other dependency with, a person who performed, contributed to, consented to or acquiesced in the assault or battery

Mr. Tafti says the alleged assaults that resulted in his foot injuries occurred when he was in a relationship of financial and other dependency with the "assailants", i.e., directors of the strata corporation and executive members of the Residential Section who "contributed to, consented to or acquiesced in the assault or battery". This interpretation of s. 3(1)(k) was never advanced before Russell J. In any event, I would not have thought that being a unitholder in a strata corporation could be said to amount to financial or other dependency. Obviously, s. 3(1)(k) is intended to apply to relationships of true dependency, usually as between domestic partners.

- [15] Finally, Mr. Tafti suggested that his failure to join the Residential Section was simply a "misnomer" that could be corrected like a typographical error. I cannot agree with this characterization.
- [16] Most important in this case are the intertwined matters of prejudice to the defendants and the interests of justice. The defendants have already experienced an avalanche of chambers applications directed at expanding Mr. Tafti's causes of action to include every complaint that he has about the building in which he lives and its management by the defendant strata corporation. He has ignored orders striking out various aspects of proposed pleadings and he has then reintroduced them in another way before another judge hoping to get a different result. Since 30 days after Russell J.'s order, various steps (including discoveries) have been taken in the litigation and orders have been made in reliance on the fact that she made the orders she did. It appears to me that judges have 'bent over backwards' to accommodate the fact that Mr. Tafti has been representing himself and suffers from some disabilities. It is time, however, for this long and expensive pleading process to come to an end and for the parties to turn their attention to the trial of the two basic causes of action brought against the defendants. I note that Madam Justice Fenlon gave a similar warning to Mr. Tafti in her reasons of January 21, 2019.
- [17] In summary, I find that it would not be in the interests of justice to extend the time for the filing of Mr. Tafti's notice of application for leave and notice of appeal.
- [18] I dismiss the application for an extension of time, with costs to the respondents. Given the delay that has been experienced thus far in obtaining Mr. Tafti's signature on the order of Russell J., I would dispense with the necessity of his signature on this court's order.

"The Honourable Madam Justice Newbury"

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/ca/20/03/2020BCCA0363cor1.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/tafti-v-davis-2020>

Prepared on 27 October 2026 · Esheria