

CANADA / JUDGMENT

Terry v. Bryson

2014 BCSC 1147

COURT

Supreme Court of British Columbia

DECIDED

24 June 2014

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2014 BCSC 1147 Terry v. Bryson IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Terry v. Bryson, 2014 BCSC 1147 Date: 20140624 Docket: S113382 Registry: Vancouver Between: Roy M. Terry Jr., Receiver of International Fiduciary Corp. S.A. Plaintiff And Ronald Bryson, Shenkinah Projects Inc., Rick Alfred Bryson a.k.a. Rickey Bryson, Lynn Bryson, Exousia Holdings Ltd., Tara Peters, Cameron Peters a.k.a. Cam Peters, Paul Zilahi, Ilona Metcalfe a.k.a. Kati Ilona Zilahi-Balogh and Juniper Equities, Inc. Defendants Before: The Honourable Mr. Justice Myers Reasons for Judgment on Costs Counsel for the Plaintiff: Lana K.L. Li Counsel for Ronald Bryson and Shenkinah Projects Inc.: Self-represented Written Submissions: May 7 and May 21, 2014 Place and Date of Judgment: Vancouver, B.C. June 24, 2014

- [1] On March 28, 2014, after a summary trial, I decided this case in favour of Mr. Bryson and several other defendants: 2014 BCSC 522. Mr. Bryson, having made an offer to settle, applies for double costs pursuant to Rule 9-1. Submissions on this application were made in writing.
- [2] Mr. Bryson was an investor in what was alleged to be an insolvent Ponzi scheme run by International Fiduciary Corp. S.A. ("IFC"). The plaintiff, the receiver of IFC, sought to recover money he alleged Mr. Bryson received in excess of his investments. The plaintiff's case was based on him establishing that IFC was insolvent from the outset because it was a Ponzi scheme: in that case the returns paid to Mr. Bryson would have been fictional.
- [3] In order to establish that IFC was a Ponzi scheme and therefore insolvent, the plaintiff relied on a British Columbia Securities Commission decision dealing with the IFC scheme: International Fiduciary Corp SA, et. al, 2008 BCSECCOM 107. He argued that Mr. Bryson was bound by the findings of fact in that decision under the doctrine of abuse of process.
- [4] I dismissed the action because I concluded that the doctrine of abuse of process did not apply. At para. 26 I stated: As I have said, no case was cited to me where the abuse of process principle was applied against someone who was not a party to the prior proceeding. There is clear logic to that: a party should not normally be bound by a proceeding in which it had no opportunity to participate. I do not say that can never be the case; I need not go that far. However, there are no exceptional circumstances here that merit preventing the defendants from litigating an issue which was determined in another forum in a proceeding in which they had no role, much less an opportunity to participate. This is especially so where the

matter was not defended on its merits by the parties charged in the proceeding.

- [5] When the summary trial was heard on February 24 to 28, 2014, the plaintiff quantified his claim as either \$829,949 or \$294,444, depending on whether Mr. Bryson could show that he did not receive funds that were paid on a mortgage that was in issue. (See plaintiff's written argument for the summary trial paras. 7 and 8.) Since the plaintiff did not address the value of its claim in his costs argument, I assume this was also the value of the claim at the time the offer was made.
- [6] On January 6, 2014 Mr. Bryson filed an application for the production of documents. In his notice of application he submitted that the Securities Commission decision was not binding in this proceeding because it did not meet the requirements of *res judicata*. At the hearing of the summary trial, the plaintiff relied on the related doctrine of abuse of process, but I do not think anything turns on that distinction in this context. The point is that the plaintiff was put on notice that Mr. Bryson would argue that the findings of the Securities Commission could not be relied on by the plaintiff in this case. Moreover, in his Notice of Application Mr. Bryson referred to the case of *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, which dealt with abuse of process.
- [7] On February 17, 2014 Mr. Bryson offered to settle this case \$43,247. The offer was worded in compliance with Rule 9-1. On February 18, 2014 the plaintiff offered to settle for \$ 200,000 U.S. (There were prior offers and counter-offers but I do not think they are relevant to this decision.)
- [8] Rule 9-1(5) sets out the options available to the court with respect to offers to settle and Rule 9-1(6) sets out the factors the court may take into consideration. I will not repeat those here.
- [9] As I said above, the plaintiff's case hinged on the findings of the Security Commission being binding in this Court. The plaintiff was put on notice that Mr. Bryson would contest that. The plaintiff knew or ought to have known there was no case on abuse of process supporting the proposition that a party should be bound by findings from a proceeding in which it had no role.
- [10] The plaintiff argues that: The Receiver also had the results of other court actions, and Reasons for Judgment of other judges in B.C. and Alberta in other actions, where the decisions of the BC Securities Commission (the "Decision") was either relied on by counsel or referred to and impliedly accepted by the Court. Accordingly, at the relevant time, the Receiver held a reasonable belief that the Decision would also be accepted and relied upon by this Court in his summary judgment application against Mr. Bryson. However, those were cases in which the *res judicata* - abuse of process point was not raised.

- [11] With respect to two cases cited by the plaintiff, I stated, at para. 25: The plaintiff cited two cases in which abuse of process was applied with respect to prior Securities Commission determinations: *British Columbia (Securities Commission) v. Kelly*, 2011 BCSC 544 and *Roeder v. Lang Michener Lawrence & Shaw*, 2007 BCCA 152. However, once again, the parties "estopped" by the Securities Commission prior findings were parties at the Securities Commission hearing.
- [12] The abuse of process point was an "all or nothing" proposition. It did not depend on factual findings which might be made. Given the lack of authority in the plaintiff's favour, in my view the offer cannot be regarded as one for nuisance value. It is an offer that ought to have been accepted - looking at the matter from the plaintiff's point of view - at the time the offer was made.
- [13] I conclude that Mr. Bryson ought to have double costs for the steps taken after the delivery of his offer. "E.M. MYERS, J."

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Prepared on 29 October 2026 · Esheria