

CANADA / JUDGMENT

The Mansion House Estates Ltd. v. Mason

2022 BCSC 2369

COURT

Supreme Court of British Columbia

DECIDED

28 September 2022

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2022 BCSC 2369 The Mansion House Estates Ltd. v. Mason IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: The Mansion House Estates Ltd. v. Mason, 2022 BCSC 2369 Date: 20220928 Docket: S198446 Registry: Vancouver Between: The Mansion House Estates Ltd. Petitioner And Robert C. Mason Respondent Before: Master Harper (As Registrar) Oral Reasons for Decision In Chambers Counsel for the Petitioner: J.K. Bienvenu R. Hira A.K. Hall Counsel for the Respondent: S. Nainaar N. Mangan Place and Dates of Hearing: Vancouver, B.C. September 13 and 28, 2022 Place and Date of Decision: Vancouver, B.C. September 28, 2022

- [1] THE COURT: From an overall perspective, this was a complex petition for the reasons identified by Justice Kent in his reasons for judgment indexed at 2022 BCSC 1364. He refers to the arcane legislation at para. 20. He refers to 13 affidavits, 200 exhibits. There was a very high volume of materials. At para. 50, Justice Kent says: Lest Mr. Mason feel that his submissions have not received due consideration by the Court, I wish to assure him that I have spent many hours reviewing the affidavits filed in this matter and the exhibits appended to those affidavits []
- [2] That comment makes it crystal clear that many hours were required by the judge to review the affidavits and, therefore, many hours were required by the petitioner to review Mr. Mason's affidavits and, conversely, probably many hours required for the petitioner to draft their affidavits. Those affidavits are not before me (and they should not be because of the sheer volume), but when I read these reasons for judgment, paras. 20 and 50 leapt out at me as being examples of how this bill of costs is more than what might be called "middle of the road".
- [3] Further, at paras. 95 through 97, Justice Kent makes findings against Mr. Mason. At para. 95, he says that Mr. Mason "is stubborn and incorrigible". At para. 96, he comments that the petitioner "spends more time dealing with issues raised or caused by Mr. Mason than all of the other residents combined". Further, at para. 97, he mentions that "Mr. Mason's conduct is deliberate" and so on, and this attitude spills over into the complexity and time involved in this petition. So, with those comments, I am more inclined to the petitioner's position than the respondent's.

- [4] I am going to defer Item 6 for later. I am concerned that I have not received any argument from the petitioner with respect to discovery and inspection of documents. That is a combined 20-unit matter and I am in a very difficult and perplexing position having received no legal argument.
- [5] So I started to give my reasons here but, with great regret, I am going to have to stand down and look at this matter more carefully so that I can give you a reasoned decision. My concern about the document issue is that that is a 20-unit item. I think, overall, the bill of costs as presented when you look at it proportionally is very reasonable, but unfortunately, I need to now look at that document issue and, having received no legal argument from the petitioner, I am a little bit at sea. I am in chambers in 20 minutes, but I will give you a decision at 1:45 p.m. if counsel can make themselves available. You can come to the courtroom and I will give you my decision. All right. We will stand down. [PROCEEDINGS ADJOURNED] [PROCEEDINGS RECONVENED]
- [6] The reasons for judgment of Justice Kent make it abundantly clear that this was a complex petition. At para. 2 of his reasons, he refers to the Commercial Tenancy Act, R.S.B.C. 1996, c. 57, being an antiquated peculiarity under the legislation.
- [7] At para. 20, Justice Kent refers to 13 affidavits which attached over 200 exhibits. The numerous three-ring binders of material, together with authorities, "were stacked almost two feet high". Justice Kent noted at para. 26 that Justice Schultes, who heard a portion of the matter, previously declined to refer the petition to the trial list. After enumerating the extraordinary demands made by this petition, Justice Kent refers at para. 25 in the first bullet as follows: []. Attempting to cram what would be a 10-day "real" trial (40 sitting hours) into a two-day chambers application (8 hours) is just hopelessly unrealistic. []
- [8] When I read that comment, it makes it abundantly clear that this petition would otherwise have been a ten-day trial. Justice Kent describes being sorely tempted to refer the petition to the trial list, but decided not to in order to bring some finality to the proceedings.
- [9] With respect to the claim for units for a written argument, I refer to para. 22 of Justice Kent's reasons, where he refers to *Main Acquisitions Consultants Inc. v. Yuen*, 2022 BCCA 249. Justice Kent talks about the lack of appropriate time and resource management in chambers hearings. He cited *Main Acquisitions* at para. 93. It is "unfair to scoop-shovel volumes of disjointed affidavits and exhibits upon the judge and expect him or her to make an informed judgment" and that "counsel cannot expect to succeed in persuading a judge" if "masses of disorganized fact and paper" are allowed to overwhelm the process.
- [10] When I read that, it reinforces in my mind the benefit of the written argument that was provided. It is apparent as well from Justice Kent's reasons that there was a great deal of compression of the evidence and legal argument into the written materials and a great deal of time was spent by the judge outside the courtroom in reading the materials and drafting his reasons.

- [11] With that overview, I now turn to the bill of costs.
- [12] I will start first with Item 10 because that will inform my decision on other matters. Here, the petitioner claimed process for obtaining and giving discovery and inspection of documents. I agree with the respondent's position that because the matter was a petition and there was no list of documents demanded, that Items 10 and 11 are not available. I refer to *Hanson v. Hanson*, 2007 BCSC 1573 at para. 15. There, Master Bouck, referring to the old numbering system in the tariff, says Item 7 and 8 are disallowed:
- [15] []
2. [] Although documents were exchanged, there were no demands issued by either party pursuant to Rule 26. An allowance for the review of and instructions on those documents is made in item 1B.
- [13] Item 1B is now Item 2. Item 2 is the catchall for various tasks for which provision is not made elsewhere in this tariff. So I will disallow Items 10 and 11, but I will be reflecting an increased number of units in Item 2. A registrar, of course, has the discretion to add on or, what used to be in the former nomenclature, tax on certain items.
- [14] Item 1, the units claimed are 5. I find this entirely appropriate and so I award 5 units for Item 1.
- [15] Item 2, which I have just referred to, because of all of the factors that I have referred to from Justice Kent's reasons, the very large volume of materials, in my view, although for technical reasons, Items 10 and 11 are not available, I have no doubt that the extensive document disclosure, review of documents, review of affidavits amounting to a two-foot high pile of materials justifies 30 units in Item 2 and I therefore award 30 units for Item 2.
- [16] Item 3, I have no difficulty with the midrange being proposed by the petitioner and award 5 units.
- [17] Item 6, I think 8 units are appropriate here. Essentially, my findings are rooted in Justice Kent's reasons.
- [18] Items 10 and 11, I have already referred to.
- [19] Item 26, I think, was agreed upon at 17.5. So I award 17.5 units.
- [20] With respect to Item 27, there is a controversy with respect to whether the short time spent in court after 2 p.m. on the last day of hearing should be allowed. In my view, 2.5 hours were spent in the morning. There was an appearance after 2 p.m. regardless of how short it was and, therefore, I agree with the petitioner's petition and award 37.5 units.
- [21] Item 29 is not controversial, that is, 1 unit.
- [22] Item 30, again, not controversial, that is, 2 units.

- [23] With respect to written argument, the respondent says that this item in the tariff is included under the heading "Trial". I do not think that is a final answer to the matter. Item 35 which is also an item that is under the heading, "Trial", says, "Attendance at trial of proceeding or of an issue in a proceeding for each day". Although I agree that that is a trial item, I do not think that written argument is limited to trial. Over the lunch recess, I looked at the cases referred to under Item 36. One case that neither counsel referred was *Brar v. British Columbia Medical Association*, 2008 BCSC 1108. In that case, the registrar allowed a certain number of units for written arguments, but the proceeding was not a trial. It was another type of proceeding. So I see no impediment to a claim for written argument in a petition proceeding and, having referred to various portions of Justice Kent's reasons, I am persuaded beyond any doubt that the written argument was important to the judge and I think 8 units is appropriate and I award 8 units.
- [24] Item 37, I think, is agreed upon at 3 units.
- [25] So, turning now to the last item, 43, "Conduct of sale if property sold by order of the court". Here, the petitioner, I think, is taking a pragmatic position anticipating that 6 units would be a fairly modest number of units that they anticipate reflecting the sale of the shares of Mr. Mason. I think the petitioner has taken a practical approach. The respondent says that the work has not been done yet and I, reluctantly, am persuaded by the respondent's position no matter how impractical and costly it might turn out to be for the respondent.
- [26] There was one minor item that has already occurred, apparently, a letter made with respect to the surrender of the respondent's shares and, therefore, for Item 43, I award 1 unit, and I will make the following ruling which can be recorded in a separate order. The petitioner has leave to deliver a further bill of costs with respect to Item 43 of the tariff and any related disbursements that are incurred with respect to the conduct of sale. That will be a separately recorded order.
- [27] Counsel can add up the units. I do not think there was any disagreement on the disbursements and the parties have reached agreement. So I have not added up the units and I will wait for counsel to do that. [SUBMISSIONS RE TOTAL OF UNITS AND OFFER TO SETTLE]
- [28] THE COURT: The double costs is for preparation and attendance at the hearing. We have got an issue that is worth 3 units which, hopefully, impresses on parties and their counsel how costly it is to attend assessments, and I think the petitioner did the very best it could to try to get some kind of settlement here and the respondent's refusal to settle the costs on a practical and robust basis I think is yet another example of the respondent's stubbornness as reflected by Justice Kent. In my view, the offer should have been accepted. I think it was a very reasonable offer and so there will be double for Items 29 and 30. So that adds on 3 units.

- [29] So it is 121 units plus the tax plus the disbursements. I will be in chambers this afternoon. If you have a bill of costs for me to sign and a certificate of costs, you can do the math and I will sign it this afternoon. Ms. Hall, do you have anything else?
- [30] CNSL A. HALL: No, Your Honour, thank you very much. We will prepare that bill and have it ready for your signing this afternoon.
- [31] THE COURT: All right. So I will be in my chambers and you will have the certificate of the costs as well. All right. So if you will just have Ms. Mangan review it and then it can just be passed up to me and I will sign it. "Master Harper"

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