

CANADA / JUDGMENT

The Owners, Strata Plan EPS 894 v. Tabares

2020 BCSC 1829

COURT

Supreme Court of British Columbia

DECIDED

26 November 2020

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2020 BCSC 1829 The Owners, Strata Plan EPS 894 v. Tabares IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: The Owners, Strata Plan EPS 894 v. Tabares, 2020 BCSC 1829 Date: 20201126 Docket: S194876 Registry: Victoria Between: The Owners, Strata Plan EPS 894 Plaintiff And Libni Pardo Tabares, Douglas Michael Poston, Tyler Bohn doing business as TSI Homes and Renovations, Rumsby Construction, Justin Heeley doing business as Prime Concrete Pumping, Butler Brothers Supplies Ltd., Vancouver Shotcrete & Shoring Inc., Sooke Coastal Plumbing and Gas Ltd., Pacific Edge Plumbing Ltd., John Doe #1, John Doe #2, ABC Company #1 and ABC Company #2 Defendants And Libni Pardo Tabares, Douglas Michael Poston, Tyler Bohn doing business as TSI Homes and Renovations, Rumsby Construction, Vancouver Shotcrete & Shoring Inc., Sooke Coastal Plumbing and Gas Ltd., Pacific Edge Plumbing Ltd., John Doe #1, John Doe #2, ABC Company #1 and ABC Company #2 Third Parties Before: The Honourable Madam Justice Marzari Reasons for Judgment Counsel for the Defendants and Third Parties, Libni Pardo Tabares and Douglas Michael Poston: M. Colwell Date of Written Submissions: November 19, 2020 Place and Date of Trial/Hearing: Vancouver, B.C. November 23, 2020 Place and Date of Judgment: Victoria, B.C. November 26, 2020

- [1] The applicants seek leave to file and serve a third party notice as against Tyler Joseph Bohn, Island Land Surveying Ltd., Rumsby Construction, Brian Rumsby and Christopher Rumsby (the "Proposed Third Parties") in the form attached as Schedule "A" to the notice of application filed November 19, 2020.
- [2] The applicants say they have served all the named and proposed parties in the action and no parties have filed responding materials. Counsel on behalf of Vancouver Shotcrete & Shoring Inc., and Justin Heeley doing business as Prime Concrete Pumping, have advised they take no position with respect to this application.
- [3] The underlying action was commenced by notice of civil claim filed on November 1, 2019. The action arises from a dispute between the applicants and their neighbor, the plaintiff strata corporation. The applicants are the registered owners of a property located at 6791 West Coast Road in Sooke, British Columbia. The plaintiff is a strata corporation and is the representative of the owners of the strata lots and common property with the addresses of 6793 and 6795 West Coast Road, Sooke, British Columbia (the "Strata Property").

- [4] The plaintiff alleges that during construction work the applicants' property in or around February 2018, the Strata Property was damaged and encroached upon causing nuisance, negligence and loss of stability of the property.
- [5] The applicants allege that they retained several to complete various aspects of the Construction, including the Proposed Third Parties, as follows:
- a) Tyler Joseph Bohn is a carpenter and/or contractor that completed, inter alia, the structural framing for the foundations and walls;
 - b) Island Land Surveying Ltd. is a company that performed property line surveying for the Construction; and
 - c) Rumsby Construction is a general partnership operated by Brian M. Rumsby and Christopher A. Rumsby, who provided excavation services in respect of the Construction.
- [6] The applicants deny any fault or liability to the plaintiff in respect of any claims in this action. However, if the applicants bear any liability to the plaintiff, then the applicants say that the plaintiffs loss and damage was caused or contributed to by the fault, negligence, breach of duty and/or breach of contract of the Proposed Third Parties,
- [7] The applicants rely on Rule 3-5(1) and Rule 3-5(4) of the Supreme Court Civil Rules, which read, in part: 3-5(1) A party against whom relief is sought in an action may, if that party is not a plaintiff in the action, pursue a third party claim against any person if the party alleges that
- (a) the party is entitled to contribution or indemnity from the person in relation to any relief that is being sought against the party in the action 3-5(4) A party may file a third party notice
 - (a) at any time with leave of the court;
- [8] Section 3-5(4) requires leave of the court to file a third party notice outside the initial pleadings period. Such leave is discretionary in nature. In exercising this discretion, the following factors are relevant:
- a) the merits of the proposed claim;
 - b) the prejudice to the parties;
 - c) the expiration of a limitation period;
 - d) any delay in proceedings; and
 - e) the timeliness of the application. (See *Tyson Creek Hydro Corporation v. Kerr Wood Leidal Associates Limited*, 2013 BCSC 1741, aff'd 2014 BCCA 17).
- [9] The overriding consideration is whether it is just and convenient in all the circumstances of the case to grant leave to file a third party notice: *Symes v. Knooihuizen*, [1998] B.C.J. No. 611 at para. 39.

- [10] I am satisfied that these factors are met in this case.
- [11] It is well-settled that for the purposes of an application for leave to add a third party, a court should assume that the facts alleged in the proposed third party notice can be established: *McNaughton v. Baker*, 1988 CarswellBC 124 (B.C.C.A.), at para 29. The applicant pleads provisions of the Negligence Act, R.S.B.C. 1996, c. 333, for contribution and indemnity that are a well established basis for bringing third party proceedings.
- [12] There is no material prejudice to the parties of this action should a third party proceeding be allowed. The action still appears to be in its early stages, there are no imminent case planning conferences or trial deadlines.
- [20] Nor am I concerned about any undue delay in bringing the application itself, or the impact the late filing of the notice will have on the proceedings at large.
- [13] Although outside of the pleading period, the application has been made just over a year after the claim was filed in November 2019, and well within the two years provided under ss. 6 and 16 of the Limitation Act, S.B.C, 2012, c. 13.
- [14] In all the circumstances, I find that it is just and convenient to grant leave to the applicant to file the third party notice. The application is granted, and the applicant has leave to file the third party notice attached to the application. The style of cause will be amended accordingly.
- [15] As this matter proceeded unopposed, there shall be no costs to any party of this application. "Marzari J."

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