

CANADA / JUDGMENT

Troico Home Solutions and Manufacturing Inc. v. Arondus

2020 BCSC 1623

COURT

Supreme Court of British Columbia

DECIDED

30 October 2020

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

2020 BCSC 1623 Troico Home Solutions and Manufacturing Inc. v. Arondus

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Troico Home Solutions and Manufacturing Inc. v. Arondus,

2020 BCSC 1623

Date: 20201030

Docket: S200811

Registry: Vancouver

Between:

Troico Home Solutions and Manufacturing Inc.

Plaintiff

And

Wayne Christopher James Terry Arondus and

Walls Alive Edmonton Ltd.

Defendants

Before: The Honourable Madam Justice Ahmad

Reasons for Judgment

Counsel for the Plaintiff:

C. Law

Counsel for the Defendant, Wayne Arondus:

J. Pollard

Counsel for the Defendant, Walls Alive Edmonton Ltd.

N. Preshaw

Place and Date of Hearing:

Vancouver, B.C.

October 7, 2020

Place and Date of Judgment:

Vancouver, B.C.

October 30, 2020

Introduction

- [1] This is an application by the defendants pursuant to s. 236 of the Business Corporations Act, S.B.C. 2002, c. 57 [the "Act"] to require the plaintiff to post security for costs and that the action be stayed pending the posting of the security.

Background

- [2] The plaintiff, Troico Home Solutions and Manufacturing Inc. ("Troico") is a B.C. company whose primary business activities are building custom cabinetry, interior design, and renovations.
- [3] The defendant, Wayne Arondus, is a former employee of the plaintiff. The defendant, Walls Alive Edmonton Ltd. ("Walls Alive") was a paint product supplier to Troico.
- [4] By notice of civil claim filed January 23, 2020, Troico alleges, among other things, that Mr. Arondus breached the terms of an employment agreement, committed fraud, and breached his duty of good faith by, among other things, soliciting and accepting employment with other employers including Troico's competitors and using Troico's materials and resources to manufacture goods and sell them for his own profit.
- [5] Troico has also alleged that Mr. Arondus collaborated with Walls Alive to have Troico contract with Walls Alive for the supply of paint products. It has alleged that Walls Alive paid Mr. Arondus a "kickback" on sales of those products to Troico.
- [6] The defendants deny all of the allegations made in the notice of civil claim.

The Law

[7] Section 236 of the Act sets out the statutory basis on which an order for security for costs will be granted against a corporate plaintiff:

236 If a corporation is the plaintiff in a legal proceeding brought before the court, and it appears that the corporation will be unable to pay the costs of the defendant if the defendant is successful in the defence, the court may require security to be given by the corporation for those costs, and may stay all legal proceedings until the security is given.

[8] An order for security for costs is discretionary, and in determining whether to exercise its discretion, the courts have distinguished between corporate plaintiffs and individual plaintiffs. Corporate plaintiffs are treated with less flexibility than individual plaintiffs: *Fat Mel's Restaurant Ltd. v. Canadian Northern Shield Insurance Co.* (1993), 76 B.C.L.R. (2d) 231 (C.A.); *Kropp v. Swanese Bay Golf Course Ltd.* (1997), 29 B.C.L.R. (3d) 252 (C.A.).

[9] In *Citizens for Foreign Aid Reform Inc. v. Canadian Jewish Congress* (1999), 36 C.P.C. (4th) 266 (B.C.S.C. Chambers) [Citizens], the court outlined a four-part test to be applied on an application for security for costs against a corporate party as follows:

1. Does it appear that the company will be unable to pay the defendant's costs if the action fails?
2. If so, has the company shown it has exigible assets of sufficient value to satisfy an award for costs?
3. Is the court satisfied that the defendant has an arguable defence to present?
4. Would an order for costs visit undue hardship on the company such that it would prevent the company's case from being heard?

[10] To be granted security for costs, the burden is on the defendant making the application to establish a *prima facie* case that the plaintiff may be unable to pay the defendant's costs if the action fails. If that burden is discharged, to avoid an order for security for costs, the onus shifts to the plaintiff to show either that it has exigible assets to satisfy any award of costs or that there is no arguable defence to the claim: *Tylon Steepe Homes Ltd. v. Pont*, 2009 BCSC 1585 at para. 19; *Citizens* at para. 18.

Application of the Citizens test

Does it appear that Troico will be unable to pay the defendants' costs if Troico's action fails?

Defendants' position

- [11] The defendants' position is that Troico may be unable to pay a costs award. They base that position on several factors. Referring to a land title search, they note that Troico does not own any real property in British Columbia. A personal property registry ("PPR") search reveals that at least some of its personal property is encumbered by secured creditors.
- [12] In further support of their position, the defendants refer to a WorkSafeBC letter dated August 6, 2020 that notes that Troico was then "active and delinquent in its assessment remittance requirements".
- [13] The defendants rely most heavily on two credit reports from Equifax, one dated March 18, 2020 and one dated October 2, 2020. On its face, the October 2, 2020 report (the "Equifax Report") indicates that Troico:
- a. has 19 reported "legal items" totaling \$303,791 against it;
 - b. has nine judgments totalling \$80,953 reported against it;
 - c. has six accounts past due totalling \$80,988 (an increase from five accounts past due totaling \$63,056 as indicated in the March 18, 2019 report); and
 - d. has a 5/5 score for "Likelihood of severe delinquency" and "Likelihood company will cease business".
- [14] In addition, the defendants take the position that the "litigiousness" of the plaintiff, as evidenced by the number of legal proceedings listed on the Equifax Report, is an indicator that it may not be able to pay any costs awards made against it. In that regard, they reference the decisions in *M.U.A. v. Four Points Sheraton Edmonton South (DBA)*, 2017 ABQB 804 and *Tim Keith Contracting Ltd. v. Richform Construction Supply Company Limited*, 2010 BCSC 1861 at para. 29.

Troico's position

- [15] Troico's first position is that the defendants have not discharged the burden of demonstrating a prima facie case that it will be unable to pay costs if the action fails.
- [16] Troico concedes that it does not own any real property. Rather, it conducts its business operations from leased premises including a showroom on West 2nd Avenue in Vancouver (the "Vancouver Showroom") and a showroom, factory, and corporate headquarters located in Coquitlam (the "Coquitlam Location"). Vanessa Richter, Troico's vice president, deposes that Troico is not in default of the lease payments due under either of those leases.
- [17] Similarly, it is not in default of any of the equipment leases registered in the PPR for which it makes regular payments and is current on the balance due on its business credit card. Troico argues the fact that it is current on those payments is an indication of its ability to pay costs.

- [18] Troico attributes its failure to pay WorkSafeBC to issues in calculating payments and in logistics due to COVID. It says those issues have since been resolved. A letter from WorkSafeBC indicates that by October 1, 2020, it was then "active and in good standing".
- [19] Finally, Troico says that the Equifax Report is inaccurate both in respect of the number of legal proceedings and judgments against it. Firstly, Ms. Richter deposes that of the 19 legal proceedings listed on the Equifax Report, one was settled, two were withdrawn or struck, one was resolved in Troico's favour, and one was paid and closed.
- [20] Troico does not offer any evidence with respect to the status of any of the other outstanding legal proceedings listed on the Equifax Report. However, Ms. Richter explains the number of legal proceedings as a function of the construction industry in which disputes often arise with clients or contractors in situations where the contractors do not complete the scope of work, Troico has to redo work due to poor workmanship, or the clients fail to pay invoices when due.
- [21] Secondly, although nine judgments are listed on the Equifax Report, Ms. Richter's evidence is that none are outstanding, having been either paid or settled.
- [22] Given the inaccuracies described by Ms. Richter, Troico says that the Equifax Report does not accurately reflect its ability to pay costs.
- [23] Brian Teed, Troico's external accountant confirms that Troico is able to make its payments as they become due. According to Troico's (unaudited) financial statements prepared by Mr. Teed, although Troico had negative retained earnings in 2017 and 2018, in 2019, its retained earnings were \$138,894. Gross revenues of almost \$4.7 million in 2019 resulted in net income of \$640,158, which included \$355,636 in net profit and \$284,522 in management fees. Ms. Richter deposes the management fees were paid into a holding company for tax purposes.
- [24] The financial statements dated December 31, 2019 also disclose current assets including accounts receivable of \$329,294, inventory of \$310,440, and a GIC valued at \$20,005.

Analysis

- [25] In *Lancaster Group Inc. v. Kenaidan Contracting Ltd.*, 2020 ONSC 1653, a Master of the Ontario Superior Court of Justice considered a defendant's application for security for costs under the "insolvency" or "instability" test used in that province. Referring to real property and personal property searches, she stated at para. 14:
- [14] I need not comment on the other searches other than to say that they are not as persuasive. Many companies do not own property. Many companies have secured creditors who provide loan and revolving lines of credit. PPSA registrations do not trouble me per se or indicate insolvency or instability. Action taken on the security is a better indicator. I see no such activity here.

- [26] I agree with that analysis. While the fact that a plaintiff does not own assets, or significant assets, may be some indication of its ability to pay (and most certainly becomes relevant on the second stage of the Citizens test), it is not necessarily determinative of the first stage of the Citizens test (i.e., whether a plaintiff will be unable to pay a costs award).
- [27] In my view, a better indicator of Troico's ability to pay a costs award is the fact that it is not in default of payments on any of the leases registered in the PPR and no action has been taken to enforce the registered security. That is unlikely to be the case if Troico had been unable to pay those creditors.
- [28] Similarly, although it does not own real property, for the purpose of ascertaining whether Troico has the ability to pay, it is significant that Troico is not in default of its obligation to pay rent for either the Vancouver Showroom or the Coquitlam Location. Monthly basic rent for the Coquitlam Location alone is \$10,140.36. Its payment of that amount on a monthly basis is an indicator of its ability to pay.
- [29] While it appears that Troico was delinquent in its remittance to WorkSafeBC in August 2020, I am satisfied with Ms. Richter's explanation that the delinquency was due to issues relating to COVID and is not attributable to its inability to pay.
- [30] The defendants' main argument focused on the Equifax Report. I accept Ms. Richter's evidence that there are inaccuracies in the content of that report in two material respects, being the number of outstanding legal proceedings and the status of the judgments against Troico. Specifically, although 19 legal proceedings were listed on the Equifax Report, Ms. Richter was able to account for five that had been resolved. (One of the listed proceedings was commenced by Walls Alive). Of the nine judgments reported against Troico, none are outstanding.
- [31] Other discrepancies are evident on the face of the Equifax Report. The summary page indicates that Troico had five collection matters totaling \$38,920. However, the more detailed information contained in the Equifax Report indicates that of those five collections, three have been closed. One was closed in January 2019.
- [32] The two outstanding collections are in respect of a creditor with whom legal proceedings had been resolved. As noted in the collection details section of the Equifax Report, ". . . In some situations, accounts are sometimes placed for collection even though the account is disputed." It not clear whether the two outstanding collections come within that qualification or have been resolved with litigation.
- [33] The inaccuracies and discrepancies contained in the Equifax Report are not insignificant. Of the categories that would most accurately reflect Troico's inability to pay, the number of unpaid judgments and outstanding collections are most relevant. At best, both relay an incomplete picture of the status of those matters. At worst, they provide a narrative that is inconsistent with Troico's financial situation. In my view, they do not accurately reflect Troico's ability to pay its debts.

- [34] Furthermore, although the defendants relied on the "score summaries" indicating a score of 5/5 for "Likelihood of severe delinquency" and "Likelihood company will cease business", they were unable to explain the basis on which those score summaries are established. Presumably, the statistics regarding legal proceedings, judgments, and collections (which I have concluded are inaccurate) inform those scores. Given the inaccuracies or discrepancies in those statistics, I view the score summaries with caution.
- [35] In the face of the inaccuracies and discrepancies contained in the Equifax Report, and without further explanation of the factors on which the score summary is based, I significantly discount the weight to be given to the content of the Equifax Report as evidence of Troico's ability to pay.
- [36] However, that is not to foreclose the possibility that a credit report or other similar report may be evidence of a plaintiff's ability (or inability) to pay a costs award in other circumstances. The inaccuracies and discrepancies in key categories of the Equifax Report prevent me from using it for that purpose here.
- [37] Having said that, the Equifax Report does disclose a significant number of legal proceedings. While the number of proceedings may be a cause for concern in other situations, in this case, I accept Ms. Richter's evidence that the number of claims against Troico is due to the nature of its business, dealing with both its clients and its subcontractors. That being the case, Troico's involvement in a number of legal proceedings does not, by itself, support the conclusion that it has difficulty staying current on its payments.
- [38] It is significant that despite the number of legal proceedings against it, Troico has no unpaid judgments. The fact that the litigation has not resulted in any unpaid judgments is a good indicator of Troico's ability to pay a costs award.
- [39] Troico has been in business since 2013. It generates significant revenues and is currently profitable. It pays rent, makes lease payments for the equipment used in its business, and pays its credit card balances as they become due. In my view, those factors outweigh the content of the Equifax Report as an indicator of its ability to pay a costs award.
- [40] On that basis, I conclude that the defendants have not established a prima facie case that Troico will be unable to pay the defendants' costs if the action fails.

Conclusion

- [41] The onus is on the defendants to establish a prima facie case that Troico will be unable to pay the defendants' costs if the action fails. As they have not done so, I do not need to consider the remaining factors of the Citizens test. I exercise the Court's discretion to decline to order security for costs to be paid by Troico.

[42] The defendants' application for an order for security for costs and an order staying the plaintiff's claim pending the posting of security for costs is dismissed.

[43] The plaintiff will have the costs of this application.

"Ahmad, J."

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/sc/20/16/2020BCSC1623.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/troico-home-solutions-and-manufacturing-inc-v-arondus-2020>

Prepared on 28 October 2026 · Esheria