

CANADA / JUDGMENT

Uber Canada Inc. v. Surrey (City)

2020 BCSC 342

COURT

Supreme Court of British Columbia

DECIDED

10 March 2020

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2020 BCSC 342 Uber Canada Inc. v. Surrey (City) IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Uber Canada Inc. v. Surrey (City), 2020 BCSC 342 Date: 20200310 Docket: S200984 Registry: Vancouver Between: Uber Canada Inc. Plaintiff And City of Surrey Defendant Before: The Honourable Madam Justice Jackson Reasons for Judgment Counsel for the Plaintiff: M.A. Feder, Q.C. A. Cocks P. Williams Counsel for the Defendant: J. Yardley S. Dubinsky P.C.M. Huynh Place and Date of Trial/Hearing: Vancouver, B.C. February 5, 2020 Place and Date of Judgment: Vancouver, B.C. March 10, 2020

Background

- [1] On February 7, 2020, I delivered oral reasons with respect to this application by Uber Canada Inc. ("Uber") seeking an interlocutory quia timet injunction enjoining and restraining the City of Surrey ("Surrey") from fining, ticketing, or otherwise sanctioning Uber and drivers for functioning in Surrey without a business license, pending the disposition of this action, the issuance of ridesharing licenses in Surrey, or further order of this Court: Uber Canada Inc. v. Surrey (City), 2020 BCSC 173 (the "Injunction Reasons"). My order included that costs of the application were payable by Surrey to Uber: Injunction Reasons at para. 56.
- [2] Rule 14-1(13) of the Supreme Court Civil Rules, B.C. Reg. 168/2009 states: When costs payable
- (13) If an entitlement to costs arises during a proceeding, whether as a result of an order or otherwise, those costs are payable on the conclusion of the proceeding unless the court otherwise orders.
- [3] At the hearing, counsel for Uber asked that costs be payable forthwith. I ordered that the parties could provide me with written submissions on that point if the matter was not resolved.
- [4] Uber submitted written submissions in support of its request that the costs be payable forthwith. Surrey provided written submissions setting out its reasons opposing. These are my reasons for judgment with respect to when the costs I ordered are payable by Surrey to Uber. Applicable Legal Principles

- [5] Costs awarded separately on an interlocutory application are not normally payable until the conclusion of the litigation: *Krafta v. F.L.E.X. Excavating Ltd.*, 2012 BCSC 616 at para. 48. The reasons behind this presumptive position were succinctly summarized by Justice Armstrong in *Krafta*:
- [49] First, an order for costs payable forthwith may prevent or hinder an unsuccessful litigant from proceeding with litigation. Second, it is preferable to have only a single assessment of costs in an action where the assessment officer is in a position to consider all aspects of the litigation. Third, the party against whom costs are granted may be unduly penalized if, after the trial, it appears that a different view should have been taken of the interlocutory proceeding.
- [6] Nonetheless, the court has the discretion to depart from this presumptive position where it is warranted in the circumstances. In *Martel v. Wallace*, 2008 BCSC 436 at para. 28, the Court made a non-exhaustive list of circumstances when costs may be payable forthwith in any event of the cause:
1. in order to control its own process, for example to deter unnecessary or unreasonable conduct in the proceedings;
 2. if it is unlikely that the matter will proceed to trial; or
 3. if the motion deals with a discrete issue that is severable from the remaining claims.
- [7] In ordering costs payable forthwith, the court should be mindful that such an order could prevent or hinder a meritorious claim from proceeding: *Martel* at para. 28. Positions of the Parties
- [8] Uber argues all three of the *Martel* rationales support an award of costs being payable forthwith in these circumstances. It argues it is unlikely that the matter will proceed to trial because "Surrey--or at least Mayer McCallum--has stated an intention to support an inter-municipal ridesharing business licence in the coming weeks or months", and the quia timet injunction will then expire. Second, it argues its application dealt with the discrete injunction, and that the outcome of the injunction application is independent of the outcome of this proceeding as a whole. Third, it argues Surrey's position on the application was unreasonable. Further, Uber argues the ordering costs payable forthwith would not offend any of the rationales for the presumptive position, i.e., costs are payable at the conclusion of the litigation.
- [9] Surrey submits there is no reason to depart from the presumptive position that costs are payable at the conclusion of the litigation. It argues there is no basis to conclude the matter is unlikely to pursue to trial, based in part on Uber submissions at the hearing of the application that the facts gave rise to numerous causes of action against Surrey. In addition, Surrey argues it was not unreasonable to oppose Uber's application, particularly given its position was formulated on short notice at the request of Uber.

Analysis

- [10] While Surrey was unsuccessful in opposing Uber's interlocutory application, I do not find its opposition was unreasonable, particularly given that the application required only a preliminary view.
- [11] With respect to whether it is unlikely this matter will proceed further, I note there is no evidence before me with respect to the position Surrey is now advancing with respect to inter-municipal licenses. Further, I agree with Surrey that Uber's submissions regarding the potential causes of action that remain outstanding leave me unable to conclude that the matter is unlikely to proceed further.
- [12] However, I agree the injunction dealt with a discrete issue that is severable from the potential remaining claims. For that reason I find it is appropriate to depart from the presumptive position that costs are payable at the end of the litigation. Therefore, I order the costs I have already ordered payable in any event of the cause are payable forthwith. "Jackson J."

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