

CANADA / JUDGMENT

Vancouver Fraser Port Authority v. Brett

2020 BCSC 1368

COURT

Supreme Court of British Columbia

DECIDED

11 September 2020

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2020 BCSC 1368 Vancouver Fraser Port Authority v. Brett

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Vancouver Fraser Port Authority v. Brett,

2020 BCSC 1368

Date: 20200911

Docket: S205094

Registry: Vancouver

Between:

Vancouver Fraser Port Authority

Plaintiff

And

Christine Brett, also known as Chrissy Brett, John Doe, Jane Doe, and Other Unknown Persons

Defendants

Before: The Honourable Chief Justice Hinkson

Oral Reasons for Judgment

Counsel for the Plaintiff:

J.M. Doyle

A. Nelson

Counsel for the Defendants:

A. Singh

M. Silongan

Counsel for the Attorney General of British Columbia:

M. Weintraub

Place and Date of Hearing:

Vancouver, B.C.

September 11, 2020

Place and Date of Judgment:

Vancouver, B.C.

September 11, 2020

[1] In reasons for judgment indexed at 2020 BCSC 876, I granted an order providing that any person having notice of the order should, within three days of the order:

(a) Vacate and cease occupation of that part of the property located at 101 West Waterfront Road, Vancouver, B.C. legally described as:

Parcel Identifier: 024-041-254

Lot D of the Public Harbour of Burrard Inlet New Westminster District Plan LMP36518 being that area outlined in red on Schedule "A" to this Order (the "Occupied Area");

(b) Remove all tents, shelters, personal chattels, rubbish, and other things in the "Occupied Area";

(c) Refrain from re-entering the Occupied Area except as authorized by the VFPA.

[2] It is alleged that some 45 individuals acted in defiance of my order. They were arrested on June 16, 2020 and have appeared before me on promises to appear.

[3] The plaintiff has served each of those individuals with applications seeking findings of contempt of court due to their alleged defiance of my order.

[4] At present, the plaintiff seeks an order that I invite the BC Prosecution Service, on behalf of the Attorney General of British Columbia, to undertake a review of the evidence and circumstances surrounding the arrests of the defendants on June 16, 2020 and to assess whether prosecutions for criminal contempt of court should be pursued.

[5] The application today pertains only to the defendants Jesse Scott Frank, Pawel Gradowski, Philippa Lentz, Adrian Nickpour-Valish, Bonny Elizabeth Peter, Nathan Vilner, Hope Vinoly, Clare Alice Wilkening, Zorian Mira Shewchuk, Alba Clevenger, and Jocelyn Nielson.

[6] The application is opposed by their counsel.

Discussion

[7] I begin these reasons for judgment with a correction in the assertion of some of the defendants. They assert that the area of the encampment that was the subject of my injunction was a city park known as Crab Park. This is incorrect. The area that was the subject of my injunction was private property adjacent to Crab Park.

[8] Although there are some controversies respecting the facts that underlie the applications before me, it is unnecessary for me to resolve those controversies on this application, so I will refrain from doing so.

[9] There is no dispute that the defendants were arrested on June 16, 2020 by the Vancouver City Police at the property that is the subject of my order.

[10] At present the contempt proceedings initiated by the plaintiff were brought pursuant to the Supreme Court Civil Rules, B.C. Reg. 168/2009.

[11] In *United Nurses of Alberta v. Alberta (Attorney General)*, [1992] 1 S.C.R. 901, Madam Justice McLachlin, as she then was, writing for the majority, explained the distinction between civil and criminal contempt at paras. 49-51:

49 It is my view that a clear distinction exists between civil and criminal contempt and that the law of criminal contempt is sufficiently certain to meet the requirements of fundamental justice. The distinction between civil and criminal contempt rests in the concept of public defiance that accompanies criminal contempt.

50 Both civil and criminal contempt of court rest on the power of the court to uphold its dignity and process. The rule of law is at the heart of our society; without it there can be neither peace, nor order nor good government. The rule of law is directly dependent on the ability of the courts to enforce their process and maintain their dignity and respect. To maintain their process and respect, courts since the 12th century have exercised the power to punish for contempt of court.

51 These same courts found it necessary to distinguish between civil and criminal contempt. A person who simply breaches a court order, for example by failing to abide by visiting hours stipulated in a child custody order, is viewed as having committed civil contempt. However, when the element of public defiance of the court's process in a way calculated to lessen societal respect for the courts is added to the breach, it becomes criminal. This distinction emerges from *Poje v. Attorney General for British Columbia*, [1953] 1 S.C.R. 516, at p. 527, per Kellock J.:

The context in which these incidents occurred, the large numbers of men involved and the public nature of the defiance of the order of the court transfer the conduct here in question from the realm of a mere civil contempt, such as an ordinary breach of injunction with respect to private rights in a patent or a trade-mark, for example, into the realm of a public depreciation of the authority of the court tending to bring the administration of justice into scorn.

[12] Counsel for the defendants opposes the order sought: to refer the matter to the BC Prosecution Service. He contends that the defendants were arrested for civil contempt of court. I find that the defendants were arrested for the alleged breach of my injunction. While Mr. Nickpour-Valish, Ms. Peter, Ms. Shewchuk, Ms. Clevenger and Ms. Nielson were apparently told that they were being arrested for civil contempt of court, it is difficult to understand why they would have been thus arrested. In any case, the basis for their arrests may be a factor that the Attorney General or the Prosecution Service will take into account. However, that cannot, in my view, be a determinative factor on this application.

[13] In *R. v. Krawczyk*, 2009 BCCA 250, at para. 7, Mr. Justice Bauman, as he then was, referred to the reasons of the trial judge in that case, commenting:

7 Madam Justice Brown, in inviting the Crown to conduct the proceedings relating to the incidents of 25 and 31 May 2006, referred to the decision of Mr. Justice Finch (as he then was) in *Fletcher Challenge Canada Ltd. v. Miller* (8 August 1991), Victoria C915008 (S.C.), and said this:

[2] So in the words of Mr. Justice Finch, then, of this court, I am satisfied that there is evidence in this case which, if accepted by the court, may support a finding of criminal contempt against Mrs. Krawczyk. I do not say that there is a *prima facie* case against her, but in my view the situation has developed that there is a public interest to be served here and it is timely for the Crown, in my respectful view, to intercede and conduct the proceedings that have been initiated.

[3] I am making no finding as to the nature of the contempt that ought to be found nor, indeed, do I make any finding that the contempt must be found. I only say that there is evidence here which, if accepted, may support a finding against Mrs. Krawczyk of contempt which is criminal in nature.

[4] Again, in the words of Mr. Justice Finch, if it should develop that the Attorney decides not to proceed against Mrs. Krawczyk on the basis that there is insufficient evidence or other reasons for not proceeding by way of criminal contempt, it will, of course, be open to the plaintiff to continue the process it has set in motion for civil contempt against Mrs. Krawczyk. If the Attorney chooses not to proceed, I will then invite Mr. Sullivan to consider this issue and to proceed if satisfied.

[14] Like Madam Justice Brown, I am satisfied that there is evidence in this case which, if accepted by me, may support a finding of criminal contempt against the defendants on this application. I am not suggesting at this stage that there is a *prima facie* case against any or all of them, but given the past and ongoing attention that the situation has, and is, receiving, there is a public interest in inviting the involvement of the Attorney General at this stage of the proceedings.

- [15] Like Brown J., I am making no finding as to the nature of the contempt that ought to be found nor am I making any finding that contempt should be found. I only say that there is evidence here which, if accepted, may support a finding of contempt which is criminal in nature against the defendants on this application.
- [16] Should it develop that the Attorney General decides not to proceed against any or all of the defendants on this application on the basis that there is insufficient evidence or other reasons for not proceeding by way of criminal contempt, it will, of course, be open to the plaintiff to continue the process it has set in motion for civil contempt against these defendants. If the Attorney General chooses not to proceed, I will then invite Mr. Doyle to consider this issue and to proceed if his clients choose to do so.
- [17] Counsel for the defendants further contends that the order sought should not be granted as criminal contempt of court proceedings, as that would be an inefficient use of public resources. This submission ignores the principle that the court must uphold its dignity and process and the importance of the rule of law in our democratic society.
- [18] In any case, the division of powers between the three branches of government places the exclusive jurisdiction to allocate funds from the public purse within the jurisdiction of the Legislature. It is not for me to say whether or not a criminal prosecution of the defendants is a wise or unwise use of public resources, but I anticipate that the Attorney General will weigh that matter against the importance of the rule of law in our democratic society.
- [19] That submission is not, therefore, a basis upon which I would decline the application before me.
- [20] Counsel for the defendants further submit that any dispute between private parties can be litigated satisfactorily without requiring an invitation to be made to the Crown. This submission fails to appreciate the need for orders of this Court to be enforced in order to uphold its dignity and the rule of law. That transforms the matter far beyond a dispute between private parties.
- [21] The remainder of the submissions of counsel for the defendants relies upon references to the Provincial Crown Counsel Policy Manual which are of no binding authority on this Court. They may, however, be considered by the Attorney General upon the invitation of this Court for him to undertake a review of the evidence and circumstances surrounding the arrests of the defendants on June 16, 2020 and to assess whether prosecutions for criminal contempt of court should be pursued.
- [22] In the result I refer the matter to the BC Prosecution Service, on behalf of the Attorney General of British Columbia, to undertake a review of the evidence and circumstances surrounding the arrests of the defendants on June 16, 2020 and to assess whether prosecutions for criminal contempt of court should be pursued.

"The Honourable Chief Justice Hinkson"

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