

CANADA / JUDGMENT

Vigh v. Coles

2022 BCSC 906

COURT

Supreme Court of British Columbia

DECIDED

1 June 2022

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2022 BCSC 906 Vigh v. Coles IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Vigh v. Coles, 2022 BCSC 906 Date: 20220601 Docket: S209330 Registry: Vancouver Between: Bela John Vigh and Ann Gardner-Vigh Plaintiffs And Gordon Coles Defendant Before: The Honourable Mr. Justice Giaschi Reconsideration Reasons on Costs Counsel for the Plaintiffs: C.M.A. Leblanc Counsel for the Defendant: D.A. Hobbs M. McGarry, A/S Place and Date of Trial: Vancouver, B.C. April 11-14, 2022 Place and Date of Judgment: Vancouver, B.C. June 1, 2022

- [1] In Oral Reasons rendered on April 14, 2022, the plaintiff was awarded compensatory damages of \$800 and punitive damages of \$3,000 against the defendant for trespass to the plaintiffs' chattels. I further directed, on that date, that the parties were to provide written submissions on costs within two weeks.
- [2] On May 10, 2022, having received written submissions from the defendant and believing that the plaintiffs had not provided any written submissions, I rendered reasons ordering that the plaintiff was entitled to disbursements but not costs. Subsequent to the issuance of those reasons, it was discovered that the plaintiffs had, in fact, provided written submissions. When made aware of this, the parties were advised that I would reconsider the issue of costs and provide supplementary reasons. These are those reasons.
- [3] The plaintiffs submit that they were the substantially successful party in this fast track action and are entitled to their costs and disbursements pursuant to Rule 15-1 of the Supreme Court Civil Rules [SCCR]. Further, anticipating that the defendant might argue that they were not entitled to costs because of Rule 14-1(10) of the SCCR, the plaintiffs submit that there were sufficient reasons for bringing this matter in the Supreme Court.
- [4] As anticipated by the plaintiffs, the defendant submits that there should be no award of costs, primarily on the basis of Rule 14-1(10).
- [5] Rule 14-1(10) provides: A plaintiff who recovers a sum within the jurisdiction of the Provincial Court under the Small Claims Act is not entitled to costs, other than disbursements, unless the court finds that there was sufficient reason for bringing the proceeding in the Supreme Court and so orders.

- [6] The rule is clear; a plaintiff who recovers an amount within the jurisdiction of the Provincial Court is not entitled to costs other than disbursements unless there was sufficient reason to bring the action in the Supreme Court.
- [7] The amount recovered by the plaintiffs in this matter, \$3,800.00, is within the jurisdiction of the Provincial Court, which has a monetary jurisdiction of \$35,000, pursuant to the Small Claims Court Monetary Limit Regulation, B.C. Reg. 179/2005.
- [8] The plaintiffs make various submissions as to why they were justified in bringing this action in the Supreme Court. Before addressing these submissions, I will canvass the legal principles and some of the authorities to which I have been referred.
- [9] First, it is clear that the plaintiff has the onus of satisfying me there were persuasive and compelling reasons for bringing the matter in the Supreme Court at the time of the commencement of the action: *Reimann v. Aziz*, 2007 BCCA 448, at para. 44; *Gehlen v. Rana*, 2011 BCCA 219, at para. 42 [Gehlen].
- [10] The likely quantum of the plaintiff's claim is an important factor, perhaps the most important factor, to take into account in determining whether there was sufficient reason for commencing the claim in the Supreme Court: *Gehlen*, at para. 47.
- [11] Other factors to consider, as endorsed in *Icecorp International Cargo Express Corp. v. Nicolaus*, 2007 BCCA 97, at para. 15, are:
- a) the complexity of the proceeding;
 - b) whether documentary discovery may be needed;
 - c) the availability of the Supreme Court summary trial procedure which could lead to an effective resolution of the proceedings;
 - d) whether the plaintiff has a bona fide preference for a jury trial; and
 - e) the plaintiff needs a judgment that could be enforced more effectively outside British Columbia than a Provincial Court judgment could be.
- [12] Yet other factors that may properly be considered are:
- a) the limited jurisdiction of the Provincial Court, such as where the claim is for declaratory relief: *Chase v. Philcox*, 2021 BCSC 576, at paras. 33-34; and
 - b) whether the assistance of legal counsel is necessary to obtain a just resolution of the claim: *Gradek v. DaimlerChrysler Financial Services Canada Inc. and Fletcher*, 2011 BCCA 136, at para. 18.
- [13] The plaintiffs submit that the following constitute sufficient reason to bring the proceeding in this Court:
- a) the relief claimed was not within the jurisdiction of the Provincial Court;

- b) the proceeding was legally complex;
 - c) documentary discovery was necessary and extensive;
 - d) the fast track process was an effective and efficient process to resolve the dispute; and
 - e) the circumstances required the assistance of counsel to obtain a just resolution of the claim.
- [14] Concerning the jurisdiction of the Provincial Court, I do not agree that the relief claimed was outside the jurisdiction of that Court. The relief claimed was damages for trespass. Such relief is clearly within the jurisdiction of the Provincial Court and, in fact, there are many reported Provincial Court decisions where such relief was provided. I referred to one such case in my reasons, *Pellegrin v. Wheeldon*, 2020 BCPC 143, but there are many more.
- [15] Concerning the complexity of the proceeding, I do not agree that this matter was so complex that it needed to be brought in the Supreme Court. There were no new or novel issues involved. The main issue was the contractual interpretation of the easement, which was not a particularly complex exercise.
- [16] The plaintiffs say that documentary discovery was necessary and complex but have provided no evidence that was the case. There were very few documents put into evidence at trial and, considering the issues, I find it difficult to accept that documentary discovery was extensive.
- [17] The plaintiffs say that the fast track process was effective and efficient and supports their choice of the Supreme Court. The authorities have recognized that the summary trial process may provide a sufficient reason to bring proceedings in Supreme Court, however, I have been provided with no authority that says the same about the fast track process. Indeed, I can see no reason why the existence of the fast track process should be a factor to take into consideration. Unlike a summary trial, a fast track action is not likely to be resolved any quicker than a small claims trial.
- [18] The plaintiffs say that the assistance of counsel was necessary. I accept that the plaintiffs were more comfortable having counsel but, given the fact that this matter was not complex, they could equally have obtained a just resolution in the Provincial Court without counsel.
- [19] The plaintiffs also appear to submit that the application of Rule 14-1(10) depends on the claim made, not on the amount recovered. This is patently wrong. The application of Rule 14-1(10) depends entirely on the amount recovered, as is apparent from the wording of the rule and the authorities referred to above. The amount claimed is only relevant, if it can be established that it was reasonable to anticipate recovery of an amount in excess of the jurisdiction of the Provincial Court. The "likely quantum" of the plaintiff's claim has been recognized as an important factor in the analysis.
- [20] In my view, at the commencement of this proceeding, the plaintiffs should have known that the likely quantum they would recover at trial would be less than \$35,000, the monetary limit of the Provincial Court. I am of this view, first, because the plaintiffs knew the cost to

repair the walkway was not in excess of \$25,000, as they had pleaded, but was slightly in excess of only \$8,000. Additionally, as was conceded at trial, they knew the walkway could be repaired and reused at a cost of \$800. Thus, their damage claim for the walkway was excessive and they knew it to be so. Second, there was minimal evidence of any emotional distress presented at trial. Realistically, in my view, at the commencement of this action, the plaintiffs could not have reasonably anticipated receiving a damage award in excess of \$35,000.

[21] Accordingly, based on all of the above factors, I find that there was not sufficient reason for bringing this proceeding in the Supreme Court. It follows that Rule 14-1(10) applies and the plaintiffs are entitled to recover their disbursements but not costs. If the parties cannot agree on the amount of the disbursements, they are to be taxed. "Giaschi J."

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Prepared on 27 October 2026 · Esheria