

CANADA / JUDGMENT

Wheatland Industrial Park Joint Venture v. Soo

2020 BCSC 1400

COURT

Supreme Court of British Columbia

DECIDED

18 September 2020

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

2020 BCSC 1400 Wheatland Industrial Park Joint Venture v. Soo

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Wheatland Industrial Park Joint Venture v. Soo,

2020 BCSC 1400

Date: 20200918

Docket: S134693

Registry: Vancouver

Between:

The Members of the Wheatland Industrial Park Joint Venture and Beneficial Owners of Land therein, Listed in Schedule "A" of the Notice of Civil Claim

Plaintiffs

And

"Bonnie" Sui Kon Soo, "Debbie" Siu Mui Wong, Wheatland Industrial Park Inc., Rajnesh Dev Singh Mann, Isle of Mann Construction Ltd., Isle of Mann Capital Corporation, Isle of Mann Development Corporation, Isle of Mann Management Services Inc., Henry J. Yong, Michael Alfredo Yong, Kau Chan Yong,

1323947 Alberta Inc., 0794553 B.C. Ltd., 0794572 B.C. Ltd., 0787315 B.C. Ltd. dba Wheatland Industrial Park (B.C.), Wheatland Business Park Ltd.,

1386387 Alberta Ltd., 1386448 Alberta Ltd., Singh & Partners LLP,

Taranjeet S. Aujla, David S. Siebenga, 1541536 Alberta Ltd.,

1531056 Alberta Ltd., 1300304 Alberta Inc., 1386390 Alberta Ltd.,

1386705 Alberta Ltd., 1541525 Alberta Inc., 0774240 B.C. Ltd.,

0774244 B.C. Ltd., 0774231 B.C. Ltd., 0774236 B.C. Ltd., 0793751 B.C. Ltd., 0790333 B.C. Ltd., Eileen Soo, Christina Soo, Austin Wong and

Derek Wong

Defendants

Before: The Honourable Mr. Justice Sewell

Reasons for Judgment

Counsel for the Plaintiffs:

T.M. Pontin

D. A. Byma

Counsel for the Defendants, 1323947 Alberta Inc., Henry J. Yong, Isle of Mann Development Corporation, Isle of Mann Management Services Inc., Isle of Mann Construction Ltd., Kau Chan Yong, Rajnesh Dev Singh Mann

B. Fraser

S. Batkin

Counsel for the Defendant, Singh & Partners LLP, Taranjeet Aujla

M. G. Armstrong, QC

No other appearances

Place and Date Hearing:

Vancouver, B.C.

September 10-11, 2020

Place and Date of Judgment:

Vancouver, B.C.

September 18, 2020

Introduction

- [1] The plaintiffs in this action apply for an order enforcing a settlement that they allege was made on February 25, 2019, when counsel for the plaintiffs accepted a settlement offer made on behalf of all of the defendants on February 17, 2019, as later clarified prior to it acceptance.
- [2] There are five groups of defendants in this action. One of the groups is known as the Isle of Mann Defendants. The offer to settle was prepared and delivered by counsel for the Isle of Mann Defendants but was made on behalf of all the defendants. Among other things, it required the plaintiffs to execute a comprehensive release of all defendants.

Position of the Parties

- [3] The plaintiffs' position is that the exchange of correspondence culminating in their counsel's letter of February 25 contained all of the essential terms of a completed contract. They also submit that the form of release they have put forward complies with the terms of the agreed settlement.
- [4] The defendants Singh & Partners LLP and Taranjeet S. Auja support the plaintiffs' position.
- [5] The Isle of Mann Defendants' position is that the exchange of correspondence did not create a binding agreement but was rather an expression of a willingness to enter into a binding agreement on the general terms of the correspondence. In any event, they submit that the form of release their counsel prepared is what was agreed to in the correspondence.
- [6] For the reasons that follow, I find that the parties did reach a binding settlement on February 25, 2019 and that the form of release proposed by the plaintiffs complies with the release agreed to on that date.

Background

- [7] This action was commenced on June 13, 2013 and has been hard fought. In the action the plaintiffs allege breach of fiduciary duty and conspiracy against the defendants with respect their investment in a joint venture known as the Wheatland Joint Venture, which was formed to carry out to a real estate development located east of Calgary, Alberta.
- [8] A 100 day trial was scheduled to commence on April 1, 2019. In early February of 2019, the parties attempted to reach a mediated settlement but were unable to do so.
- [9] On February 17, 2019, counsel for the Isle of Mann Defendants delivered an offer to settle to the counsel for the plaintiffs. The offer began with a detailed statement of the Isle of Mann Defendants' position in the case and was stated to have been delivered pursuant to Rule 9-1 of the Supreme Court Civil Rules.

[10] The letter set out the following terms of settlement, which are accurately summarized in para 13 of part 2 of the notice of application;

- (a) The defendants, Bonnie Soo and Debbie Wong, (Bonnie and Debbie) and their family, will surrender any interest in the units held by them and their various related corporations;
- (b) The Isle of Mann Defendants, through a numbered company, will purchase the plaintiffs units for \$3,625,000 (or \$42,150 per unit based on 86 units) and assume the debt associated with each unit;
- (c) Payment of the \$3,625,000 will be made within 60 days of acceptance of the offer;
- (d) The defendants, Michael Yong, Bonnie Soo, and Debbie Wong, will bring certain corporations holding their units in the investment into good standing, transfer their respective shares to the Isle of Mann Defendants or their nominee, and resign as directors/officers;
- (e) The Isle of Mann Defendants will not oppose any proceeds from the enforcement of the orders made by the BC Securities Commission in *Re Wong*, 2017 BCSECCOM 57 being paid to the plaintiffs, in addition to the monies paid pursuant to this settlement;
- (f) The parties to the Action "will execute mutual comprehensive releases to the benefit of every other party, including Wheatland Industrial Park Inc., and agree to take no further proceedings in respect of their claims." The parties agreed which releases will include non-disparagement and confidentiality provisions (the "Mutual Release"); and
- (g) The parties will execute a CDO on a without cost basis.

(the "Settlement Offer")

[11] After some further correspondence about the ability of the plaintiffs to pursue recovery of funds seized by the British Columbia Security Commission, as contemplated in subparagraph e above, and the extent of the confidentiality obligations relating to the settlement, on February 25, 2019 counsel for the plaintiffs wrote to counsel for the Isle of Mann Defendants stating;

I confirm that the plaintiffs have agreed to accept the settlement offer set out in your letter of February 17, 2019, subject to the clarifications in the email correspondence between counsel on February 21, 2019 (attached) as well as the emails of today's date (also attached)

I understand that you will prepare a first draft of the settlement agreement and release for counsels' review.

[12] The accepted offer contemplated that the parties would execute further agreements with respect to the settlement, including a settlement agreement, release and documentation necessary to transfer the plaintiffs' limited partnership interests to the Isle of Mann Defendants.

- [13] The exchange of correspondence attached to in the above email made no mention of the terms of the releases contemplated in the February 17, 2019 offer.
- [14] After February 25, the parties began preparation of documentation to give effect to the apparent settlement. Unfortunately, in the course of discussions about the settlement documentation it became apparent that the parties disagreed on the wording of the release which was to be part of the settlement documentation. Despite this, the parties continued to address other issues with respect to the settlement documentation. The plaintiffs and the Isle of Mann Defendants have, however, been unable to resolves their disagreement over the terms of the release.
- [15] On February 27, 2019, counsel for the plaintiffs sent an email to all counsel stating that he intended to attend at a Trial Management Conference that had been set for March 4 and inform the court that the matter had been settled, but the plaintiffs wished to preserve the scheduled trial date until a formal settlement agreement was drawn up and the settlement funds paid.
- [16] On March 4, 2019, counsel for the plaintiffs and the Isle of Mann Defendants appeared at the Trial Management Conference and informed me that a settlement had been reached but counsel for the plaintiffs asked that the matter not be removed from the trial list immediately. The Trial Management Conference was adjourned to March 15, 2019, when counsel appeared and confirmed that the trial would not proceed on April 1 as scheduled.
- [17] On March 14, 2019 counsel for the Isle of Mann Defendants forwarded a form of settlement agreement and release to all counsel. After setting out the usual broad release language contained in many releases the release stated as follows;

and in particular, but without restricting the generality of the foregoing, those claims resulting from or in any way arising out of or relating to the Action.

- [18] It is common ground that, if accepted, the effect of this language would have been to release the defendants from all claims that the plaintiffs had against them, whether or not those claims had any relationship to the matters in issue in these proceedings.
- [19] This application arises from the inability of the plaintiffs and the Isle of Mann Defendants to agree that this was the proper construction of the release language contained in the settlement agreement.

Discussion

- [20] There are two issues to be determined. The first issue is whether the parties are bound by the plaintiffs' acceptance of the modified offer of the defendants. The second issue, which is to a limited extent related to the first, is what were the terms of the release agreed to, or in other words, what is the proper construction of the release provisions of the settlement.

Was a binding settlement agreement entered into?

- [21] The plaintiffs' position is that the exchange of correspondence contains all of the essential elements of a concluded agreement, and that the reference to further documentation simply set out the manner in which the settlement should be implemented. The defendants Taranjeet Aujla and Singh & Partners LLP agree with the plaintiffs' position on this issue.
- [22] The Isle of Mann Defendants submit that the exchange of correspondence did not result in a binding agreement but was limited to an agreement to negotiate a further more specific agreement governing the settlement.
- [23] The Isle of Mann Defendants submit that the parties were not in agreement over the terms of the release to be executed and there were numerous issues, some of which were not known to the parties at the time of the agreement, which were essential and had not been agreed to. In his oral submissions, counsel set out the following essential terms, other than the form of release that he submitted, had not been agreed to;
1. The method by which the plaintiffs would transfer their joint venture units to the Isle of Mann Defendants.
 2. The identity of the owners of the units.
 3. The method by which Bonnie and Debbie would surrender the 43.5 units they controlled to Wheatland Industrial Park Inc.
 4. How third party claims were to be dealt with, and in particular, whether such claims were covered by the agreement.
 5. At the time of the agreement, the parties were not aware of the right of first refusal provisions of the Wheatland Joint Venture Agreement, and therefore made no provision for determining how that issue should be dealt with.
- [24] The law is well settled that when parties enter into an agreement that contemplates the execution of a further more elaborate document, whether the parties are bound by the first agreement is a question of fact to be determined objectively from the language of the alleged agreement considered in the context of the surrounding circumstances; *Langley Lo-Cost Builders Ltd. v. 474835 B.C. Ltd.*, [2000] B.C.J. No. 1187 (BCCA).
- [25] The principle is also stated in *Calvin Consolidated Oil & Gas Co. v. Manning* [1959] S.C.R. 253, quoted in *Langley Lo-Cost Builders* at para 32;
- 32 The law relating to such a clause is well stated in Canada in the judgment of the Supreme Court of Canada in *Calvan Consol. Oil & Gas Co. v. Manning*, [1959] S.C.R. 253 where Judson J. writing for the Court, stated at 261:
- Whether the parties intend to hold themselves bound until the execution of a formal agreement is a question of construction... The principle is well stated by Parker J. in *Hatzfeldt-Wildenburg v. Alexander*, [1912] 1 Ch. 284 at 288-9, 81 L.J. Ch. 184, in these terms:

It appears to be well settled by the authorities that if the documents or letters relied on as constituting a contract contemplate the execution of a further contract between the parties, it is a question of construction whether the execution of the further contract is a condition or term of the bargain, or whether it is a mere expression of the desire of the parties as to the manner in which the transaction already agreed to will in fact go through. In the former case there is no enforceable contract either because the condition is unfulfilled or because the law does not recognise a contract to enter into a contract. In the latter case there is a binding contract and the reference to the more formal document may be ignored.

[26] The leading case in British Columbia on settlement agreements is *Fieguth v. Acklands Ltd.* [1989] B.C.J. No. 857 (BCCA), also a decision of Chief Justice McEachern. In *Fieguth*, Chief Justice McEachern noted the distinction between matters of contract and matters of completion or implementation. Matters of contract require the court to determine if the essential elements of the bargain have been agreed to. Matters of implementation require a determination of whether subsequent conduct of the parties amounts to a repudiation or abandonment of a contract once established.

[27] In *Fieguth*, the Chief Justice explained the process to be followed once a binding agreement has been found to exist;

The next stage is the completion of the agreement. If there are no specific terms in this connection either party is entitled to submit whatever releases or other documentation he thinks appropriate. Ordinary business and professional practice cannot be equated to a game of checkers where a player is conclusively presumed to have made his move the moment he removes his hand from the piece. One can tender whatever documents he thinks appropriate without rescinding the settlement agreement. If such documents are accepted and executed and returned then the contract, which has been executory, becomes executed. If the documents are not accepted then there must be further discussion but neither party is released or discharged unless the other party has demonstrated an unwillingness to be bound by the agreement by insisting upon terms or conditions which have not been agreed upon or are not reasonably implied in these circumstances.

[28] I conclude that the exchange of correspondence in February 2019 resulted in the parties reaching agreement on all of the essential terms of a settlement. I base this conclusion on the wording of the correspondence. However, I am also of the view that the surrounding circumstances support such a conclusion.

[29] The correspondence contains a clear statement that the action is settled on the terms set out in it. It sets out the parties to the settlement, the amount to be paid to the plaintiffs and a sufficient description of the manner in which the funds are to be paid. It therefore contains the essential elements of a commercial contract, the parties, the price and the subject matter of the consideration. In addition, there is no suggestion in the offer or acceptance that a binding agreement was conditional upon the parties entering into a formal agreement.

- [30] I find that the unresolved terms relied upon by the Isle of Mann Defendants in argument as being essential to the contract are matters of contract implementation. For example, the right of first refusal issue was one that potentially could have prevented performance of the agreement to sell some or all of the joint venture units. The result of such an occurrence might have been to frustrate performance of the agreement or possibly have been a breach of contract by the plaintiffs. It did not however affect the question of whether the parties had agreed to their purchase and sale. In this regard, I note that the parties have dealt with each of those issues to their mutual satisfaction.
- [31] The factual matrix in which the agreement was made also supports the conclusion that the parties objectively expressed an agreement to be bound. The original offer from the Isle of Mann Defendants was stated to be made pursuant to Rule 9-1 of the Supreme Court Civil Rules, which is clearly designed to promote the final settlement of litigation before trial. The parties agreed to an adjournment of the trial which, given its estimated length, could not reasonably have reset for over a year.
- [32] I therefore conclude that the parties did reach a final and binding settlement agreement on February 25, 2019, and that any outstanding matters as of that date were matters of implementation of the terms agreed to.

What were the terms of the settlement?

- [33] The parties disagree on the scope of the release required by the offer of February 17, 2019 which was as follows;

All parties to the Action will execute mutual comprehensive releases to the benefit of every other party, including Wheatland Industrial Park Inc., and agree to take no further proceedings in respect of their claims. The parties will also agree to provisions for non-disparagement and confidentiality;

- [34] The parties agreed that the Isle of Mann Defendants would prepare the first draft of the settlement agreement and release. On March 14, 2019 their counsel delivered that draft. It set out the scope of the release in some detail, which concluded with the following language;

and in particular, but without restricting the generality of the foregoing, those claims resulting from or in any way arising out of or relating to the Action.

- [35] The parties agree that the effect of these words was to extend the release to any claim of any nature that the plaintiffs had against the defendants, whether or not related to the matters in issue in this litigation.
- [36] Counsel for the plaintiffs objected to this language and took the position that the scope of the release should be limited to any claim arising in respect of the matters in issue in this litigation.

- [37] The plaintiffs' position is that an objective observer with knowledge of the surrounding circumstances would conclude that the subject matter of the release was the matters in issue in the litigation. They submit that the purpose of the settlement was to resolve the issues in this case, and that the interpretation urged by the Isle of Mann Defendants amounts to the seeking of an additional benefit over and above the terms set out in the settlement agreement.
- [38] The Isle of Mann Defendants rely heavily on the word "comprehensive" contained in the February 17 offer. Their counsel relied on dictionary definitions of that word that state that it is a word of wide scope. They also rely on the fact that the settlement specifically carved out the right of the plaintiffs to pursue recovery from any funds collected by the British Columbia Securities Commission in enforcement proceeds against Bonnie and Debbie in connection with the promotion of the Wheatland project and another project in Alberta called Rocky View. They say that such a carve out would have been unnecessary if the release had been limited to the issues raised in this litigation.
- [39] The Isle of Mann Defendants also submit that general releases of all claims are the usual practice in litigation in British Columbia. They relied on passages from Fred D. Cass, *The Law of Releases in Canada*, Canada Law Book, 2006, which describe a general release as containing widely drawn general wording releasing all claims one party may have against another.
- [40] Despite the able submissions of the Isle of Mann Defendants' counsel, I have concluded that the original offer to settle as accepted did not stipulate for a release of claims that did not arise in respect of the matters in issue in this action.
- [41] In my view, the general understanding of a release given in an action is that the release relates only to the matters in issue in the action, or can be said to arise in respect of those matters. The concept of a general release is aptly described in Mr. Cass's text as follows;
- The gist of a complete and final release is that the plaintiff discharges the defendants (and other persons referred to therein) from an action, complaint, claim, indebtedness, and so on. The intent is to liberate a party, once and for all, from any liability or obligation to another party arising out of particular circumstances. (emphasis added)
- [42] As I read this definition, the author states that in the usual situation a release is taken to be given in respect of the issues in dispute between the parties. This is made clear from the sample full and final release precedent set out in Appendix B of his book. That precedent expressly provides that the matters in respect of which the release is given be explicitly set out.
- [43] There was very little judicial authority directly on point on this issue. However, in *Umholtz v. Umholtz*, [2004] O.J. No. 4020, Justice Corbett stated a proposition with which I agree;

4 The default position, it seems to me, is that the parties are taken to have resolved all matters that:

- (a) were raised in the litigation;
- (b) were known to the parties at the time of settlement; or
- (c) ought to have been known to the parties if they had exercised reasonable diligence at the time of settlement.

This position is often reflected in release language such as the following: "all [claims] which were raised in or could have been raised in the [legal proceedings] existing up to the present time" ("Standard Language"). A broader release, of claims not asserted in the proceedings, and both unknown and not reasonably knowable by a party, should surely require express agreement.

- [44] It is of course open to a party to seek a release of unrelated claims but in my view, if such a release is required it must be clearly set out. In that regard, it stands in the same position as any other collateral benefit that a party may require as a condition of the settlement.
- [45] The Isle of Mann Defendants provided no evidence in support of their submission that the general understanding was that a release usually encompasses matters unconnected with the litigation. In my view, such a practice would frustrate rather than further settlement of disputes by putting parties in the position of having to evaluate all such possible claims in deciding whether to settle litigation.
- [46] I also agree with counsel for the plaintiffs that the parties to an action will often lack sufficient information to assess such other claims because they have not been subject to the discovery process of the Supreme Court Civil Rules.
- [47] With respect to the inferences that can be drawn from the carve out of claims to the Securities Commission, there was no evidence that the plaintiffs intended to seek recourse to funds seized in respect of the Rocky View Project. The correspondence is entirely consistent with clarification of the provision in the February 17 offer that the plaintiffs could pursue possible recovery from funds seized by the British Columbia Securities Commission in respect of the Wheatland project.
- [48] Accordingly, I conclude that the form of release proposed by counsel for the plaintiffs complies with the release agreed to in the settlement, and that form should be used in the final settlement documents.

- [49] The plaintiffs seek an order requiring the defendants to execute the settlement documents attached as Appendix B to the Notice of Application. However, in my view it is more appropriate to decide the matters that were argued before me. Those matters were whether there was a binding settlement agreement and what were the terms of the release agreed to in the settlement. No argument was directed to the balance of the settlement documentation.
- [50] I have found that there was a binding agreement and that the form of release put forward by the plaintiffs accords with that settlement and that the form put forward by the Isle of Mann Defendants does not.
- [51] These findings should be sufficient to permit the parties to complete the settlement documentation. If the parties encounter further difficulties they may apply to me.

Costs

- [52] The Notice of Application sought an order for special costs of this application but counsel made no oral submissions in support of that relief.
- [53] The plaintiffs have shown no grounds for an award of special costs. An award of special costs is an extraordinary remedy to be granted only if the court concludes that a party has engaged in reprehensible conduct in the course of the litigation. Reprehensible conduct has been defined as conduct worthy of reproof.
- [54] No such grounds have been shown on this application. The parties had a disagreement over the proper interpretation of the settlement. Both parties conducted themselves properly in the conduct of this application.
- [55] However, the plaintiffs are the successful party and are entitled to the costs of the application on Scale B.
- [56] In the circumstances of this case and given the very limited role played by their counsel, Taranjeet Aujla and Singh & Partners LLP will bear their own costs of the application.

"Sewell 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/20/14/2020BCSC1400.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/wheatland-industrial-park-joint-venture-v-soo-2020>

Prepared on 28 October 2026 · Esheria