

CANADA / JUDGMENT

Woodbridge Developments Ltd. v. 1056119 B.C. Ltd.

2017 BCSC 2462

COURT

Supreme Court of British Columbia

DECIDED

31 May 2017

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2017 BCSC 2462 Woodbridge Developments Ltd. v. 1056119 B.C. Ltd. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Woodbridge Developments Ltd. v. 1056119 B.C. Ltd., 2017 BCSC 2462 Date: 20170531 Docket: S162941 Registry: Vancouver Between: Woodbridge Developments Ltd. Plaintiff And 1056119 B.C. Ltd. Defendant Before: The Honourable Mr. Justice Mayer Oral Ruling In Chambers Counsel for the Plaintiff: D.J. Taylor J.R. Wolfe Counsel for the Defendants: D. Gautam Place and Date of Hearing: Vancouver, B.C. May 31, 2017 Place and Date of Ruling: Vancouver, B.C. May 31, 2017

- [1] THE COURT: Before me today is an application brought by the defendant numbered company 1056119 BC Ltd. to remove a Certificate of Pending Litigation ("CPL") with respect to properties in Coquitlam, British Columbia. The plaintiff/respondent Woodbridge Developments Ltd. seeks an order adjourning the defendant's application and an order requiring the deponent for the defendant numbered company, Mr. Dhillon, to attend at cross-examination on his affidavit sworn May 3, 2017.
- [2] The plaintiff seeks an order to cross-examine Mr. Dhillon to provide the plaintiff with the ability to adduce additional evidence in support an argument that its claim against the lands in question has a reasonable chance of succeeding and therefore justifying the preservation of the CPL in advance of trial.
- [3] In addition, the other issue I am to consider is whether a delay in removal of the CPL will prevent the defendant from completing the purchase of an adjacent property in Coquitlam, which requires removal of various subjects and other steps necessary before the defendant can exercise an option to purchase an adjacent property in Coquitlam.
- [4] First of all, with respect the issue of urgency, I am not convinced in this case that the arguments raised by counsel for the defendant with respect to the urgency of removing the CPL are sufficient to justify denial of the plaintiff's application to cross-examine Mr. Dhillon his affidavit. It was a little bit unclear to me at the beginning of submissions as to precisely what the impact effect of the CPL not being discharged by June 15th would be on the defendant's ability to purchase the adjacent property. I now understand that the effect of not

doing so would be to eliminate or to reduce leverage that the defendants believe that they may have to seek an extension of their option to purchase the adjacent property. That is, although a practical problem for the defendants, in my view not a sufficient justification for me in this case to consider discharging the CPL and disallowing the plaintiff's application to cross examine on affidavit at this time.

- [5] With respect to whether or not an order for cross-examination on affidavits should be granted in this case, counsel for both parties agree, as do I, that this is a discretionary power on the part of the court. The court, of course, when exercising a discretionary power is required to act judiciously to make a determination based on what makes sense in all of the circumstances.
- [6] I can say that in matters such involving a discharge of a CPL, they tend to be very fact heavy, even if the facts are only evaluated on a preliminary basis for the purposes of determining whether or not claim of the plaintiff stands a reasonable chance of success. Where there is a conflict in the evidence on an application for a discharge of a CPL, in the absence of having providing the parties with an opportunity to cross-examine on those affidavits, it is difficult if not impossible for the court to make a determination with respect to whether or not the underlying claim stands a reasonable chance of succeeding.
- [7] On that basis, given the authorities that have been summarized by counsel for the plaintiff in this case and in particular with reference to the decision of the BC Court of Appeal in *Youyi Group Holdings (Canada) Ltd. v. Brentwood Lanes Canada Ltd.*, 2014 BCCA 388 (paras. 41 and 42) I consider that it is appropriate to grant the plaintiff's application for an order to cross-examine Mr. Dhillon on his affidavit. I so order, with some conditions, which I will outline.
- [8] Regardless of whether or not a justification for bringing an application for the CPL on the basis of urgency and the probity of evidence to be gathered at cross-examination has validity, the defendant applicant in this case is entitled to have its application for discharge of the CPL heard at the earliest reasonable time. As a result I will direct the parties to make best efforts to set a date for cross-examination of Mr. Dhillon at the earliest possible time.
- [9] Counsel for the plaintiff has indicated in submissions that he is generally available to conduct this cross-examination as soon as possible, and I would urge the parties and so direct the parties to make best efforts to set an examination for discovery of Mr. Dhillon at the earliest possible date. Based on the representations of Mr. Taylor indicating that there were no issues with respect to cross-examination of Mr. Howard on behalf of the plaintiff, I do not believe that it is necessary for me to make any orders with respect to cross-examination of Mr. Howard. It is my expectation that he will simply be made available for cross-examination at an also mutually agreeable time.

[10] With respect to setting a further hearing for discharge of the CPL, I would like to make it very clear to both counsel that I do not consider that two hours is likely long enough, given the extent of the submissions that have been made even in respect of this adjournment application and an application for cross-examination today. I recommend that you consider setting the matter down for a one-day hearing.

[11] Costs will be in the cause. "Mayer, J."

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