SUPREME COURT OF YUKON

Citation: *Vachon v. Twa*, 2019 YKSC 37

Date: 20190712
S.C. No. 18-A0152
Registry: Whitehorse

BETWEEN

YOLANDE VACHON

PLAINTIFF

AND

ROB TWA

DEFENDANT

Before Madam Justice S.M. Duncan

Appearances:
Yolande Vachon — Appearing on her own behalf
Rob Twa — Appearing on his own behalf

REASONS FOR JUDGMENT
(Application to Strike)

INTRODUCTION

[1] Yolande Vachon claims Rob Twa wrongly sold to someone else a trailer that belonged to her in the Benchmark Trailer Park. Rob Twa, one of the owners of 41750 Yukon Inc., operating as Benchmark Trailer Park, agrees that he showed Ms. Vachon a trailer in 2016 but no agreement of purchase and sale, oral or written, was ever entered into between his company and Ms. Vachon. He also agrees that he told Ms. Vachon several weeks after he showed her the trailer that it had been sold to someone else.

[2] Mr. Twa brings an application to strike the claim on the basis that it discloses no reasonable claim, it is unnecessary, scandalous, frivolous or vexatious and is otherwise an abuse of process of the court. He relies on his statement of defence; his affidavit filed May 10, 2019, setting out the facts in support of his position, as well as a transcript from the first Case Management Conference of March 19, 2019, where both parties discussed in some detail their positions; and his oral submissions at the application hearing.

[3] Ms. Vachon filed no written materials in response to Mr. Twa's application but made oral submissions at the hearing.

[4] In considering this matter, I relied on the statement of claim, statement of defence as a basis for deciding the matter under Rule 20(26)(a) of the Yukon *Rules of Court*. I relied on the pleadings as well as Mr. Twa's affidavit and attached exhibits, and the oral submissions of both Mr. Twa and Ms. Vachon at the hearing of the application as a basis for deciding the matter under Rule 20(26)(b) and (d).

The Legal Tests

[5] The test to be met for an order to strike a statement of claim and stay or dismiss the action because it discloses no reasonable claim was articulated in *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, as follows:

> [17] The parties agree on the test applicable on a motion to strike for not disclosing a reasonable cause of action under r. 19(24)(a) of the [former British Columbia Rules of Court]. This Court has reiterated the test on many occasions. A claim will only be struck if it is **plain and obvious**, **assuming the facts pleaded to be true, that the pleading discloses no reasonable cause of action**: *Odhavji Estate v. Woodhouse*, 2003 SCC 69, [2003] 3 S.C.R. 263*,* at para. 15; *Hunt v. Carey Canada Inc*., [1990] 2 S.C.R. 959, at p. 980. Another way of putting the test is that **the claim has**

> **no reasonable prospect of success**. Where a reasonable prospect of success exists, the matter should be allowed to proceed to trial: see, generally, *Syl Apps Secure Treatment Centre v. B.D*., 2007 SCC 38, [2007] 3 S.C.R. 83: *Odhavji Estate; Hunt; Attorney General of Canada v. Inuit Tapirisat of Canada*, [1980] 2 S.C.R. 735.
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> …
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> [22] A motion to strike for failure to disclose a reasonable cause of action proceeds on the basis that the facts pleaded are true, unless they are manifestly incapable of being proven: *Operation Dismantle Inc. v. The Queen*, [1985] 1 S.C.R. 441, at para. 455. No evidence is admissible on such a motion. … It is incumbent on the claimant to clearly plead the facts upon which it relies in making its claim. … The facts pleaded are the firm basis upon which the possibility of success of the claim must be evaluated. … (my emphasis)

[6] Rule 19(24)(a) of the former British Columbia Rules is the same as the current Rule 20(26)(a) of Yukon. No evidence is admissible under this provision.

[7] The test for a pleading to be found unnecessary, scandalous, frivolous or vexatious was set out in *McDiarmid v. Yukon*, 2014 YKSC 31. It requires the defendant to demonstrate that the pleading is groundless or manifestly futile, or that it is not in an intelligible form, or that it was instituted without any reasonable grounds whatsoever or for an ulterior purpose: *McNutt v. Canada (Attorney General)*, 2004 BCSC 1113; *Hartmann v. Amourgis*, [2008] 168 A.C.W.S. (3d) 40 (O.N.S.C.). Evidence is permitted to be considered under this provision.

[8] A finding of abuse of process generally allows the court to prevent a claim from proceeding where to do so would violate principles of judicial economy, consistency, finality and the integrity of the administration of justice.

ISSUE

[9] The issue for decision is whether the facts here meet the tests set out in Rule 20(26). In other words, is Ms. Vachon's claim that Mr. Twa sold a trailer that belonged to her reasonable, or is it unnecessary, scandalous, frivolous or vexatious or otherwise an abuse of process?

DISCUSSION

i) Agreed facts

[10] Mr. Twa and Ms. Vachon agree that there was no written agreement of purchase and sale. Both say that neither Ms. Vachon nor Mr. Twa signed any document related to the purchase and sale of a trailer. Ms. Vachon says she received an information paper from Mr. Twa setting out the cost and other information, which she showed to Nicholas at the TD Bank when discussing a mortgage. Mr. Twa agrees that Ms. Vachon received an information hand-out from his company that describes among other things the trailer unit and the selling price.

ii) Claim discloses no reasonable claim or cause of action

[11] Ms. Vachon bases her claim that the trailer was hers on the following assertions: she spoke to Father Mickey, her priest, about the design; it was similar to a condominium she had many years ago (in the 1970s or 1980s) in Mississauga; and the design and colours of the trailer were done for her because of her work on "National CODES 1990".

[12] Ms. Vachon claims she told Mr. Twa she was interested in the trailer, but she had to speak to the bank to get the financing in place and it would take three weeks. She

said when she called Mr. Twa two weeks later, he then told her the trailer had been sold. She also claims he removed it from the lot.

[13] Even on a generous reading of the statement of claim, allowing for inadequacies due to deficient drafting, I find it is plain and obvious that this claim is bound to fail. I do not see any basis on the facts as pleaded by Ms. Vachon to support her assertion that the trailer was legally hers, or even that there was a verbal agreement for a purchase and sale, let alone a written agreement. Expressing interest in purchasing a trailer and providing information about it to a bank as a first step to obtaining a mortgage is not sufficient to assert ownership. Claiming that because the design and colours of a trailer are exactly to a proposed purchaser's specification and preferences is not a sufficient basis on which to assert ownership. There is no reasonable legal basis for Ms. Vachon's claim, assuming all of her pleading to be true.

iii) Unnecessary, scandalous, frivolous and vexatious

[14] Mr. Twa says that Benchmark purchases the trailers from the manufacturer. They are shipped from Penticton and all of the finishing work is done in Whitehorse. Benchmark chooses all the colours and décor well in advance of the point of sale. At no time did Mr. Twa communicate with Ms. Vachon before the trailer was finished. He met her for the first time in 2016 when he showed her the trailer.

[15] Mr. Twa says that Benchmark provides all proposed purchasers of a trailer home with a standard form purchase agreement which they can then take to a lawyer for preparation of the final documents. If a mortgage is required, the proposed purchaser selects their own financial institution. Benchmark does not offer mortgages. Benchmark does not accept verbal offers to purchase.

[16] Mr. Twa swore in his affidavit of May 10, 2019, that shortly after he showed Ms. Vachon the trailer, he spoke to her a second time when she called, and told her then the trailer had been sold. He stated that there were no arrangements, deals or any paperwork between Ms. Vachon and him or his company, about property or sale of a trailer, or anything else. There were no written or verbal deals of any kind. Mr. Twa confirmed at the hearing of the application that he did not remove the trailer from the trailer park and it would not be in his economic interest to do so.

[17] Mr. Twa swore in his affidavit that he does not know Father Mickey, referred to by Ms. Vachon in her statement of claim and during the case management conferences.

[18] Unfortunately, Ms. Vachon's statement of claim is difficult to understand. While she was able to explain it somewhat further during the case management conferences and the hearing of this application, there is much in the claim that is difficult to follow and to connect with her main claim. For example, Ms. Vachon states the following at paragraph 1 of her statement of claim:

> 1. This house trailer in Crestview was designed and the colors done specifically for me, this because my doing the work on National CODES 1990. The book that Brad Cathers now have for Team Yukon. I mentioned to Father Mickey to get the people responsible for turning a building on Glen Erin and Aquitaine in Mississauga Ontario. They obtained this upon listening to my phone (the authorities knew this fully, back then)[.]

[19] As a result I find that the test in Rule 20(26)(b) is also met.

(iv) Abuse of Process

[20] There are few cases of applications to strike that are decided on the basis of abuse of process. The Yukon decision of *Wood v. Yukon (Highways and Public Works)*, 2016 YKSC 68, referred to *Willow v. Chong*, 2013 BCSC 1083, where the Court wrote:

> that abuse of process under the [Rules] or the court's inherent discretion is a flexible doctrine. It allows the court to prevent a claim from proceeding where to do so would violate principles of judicial economy, consistency, finality and the integrity of the administration of justice. A claim may be struck where it is a collateral attack on an administrative decision that is subject to appeal or judicial review: *Cimaco International Sales Inc. v. British Columbia*, 2010 BCCA 342; *Stephen v. HMTQ*, 2008 BCSC 1656; *Varzeliotis v. British Columbia*, 2007 BCSC 620; *Gemex Developments Corp. v. City of Coquitlam*, 2002 BCSC 412; *Berscheid v. Ensign*, [1999] 88 A.W.C.S. (3d) 580 (B.C.S.C). A claim may also be struck as an abuse of process where it is an attempt to re-litigate an issue that has already been decided: *Toronto (City) v. Canadian Union of Public Employees (CUPE), Local 79*, 2003 SCC 63.

[21] In this application, the abuse of process ground is not applicable, based on the definition above that has emerged in the case law. This is not a collateral attack on an administrative decision, nor is it an attempt to re-litigate an issue that has already been decided.

CONCLUSION

[22] I grant Mr. Twa's application to strike the statement of claim pursuant to Rule 20(26)(a) and (b) and also make an order dismissing the action.

[23] Given that both parties are self-represented, there will be no order as to costs.

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DUNCAN J.