

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *685946 B.C. Ltd. v. 0773907 B.C. Ltd.*,
2024 BCSC 1700

Date: 20240912
Docket: S211357
Registry: Vancouver

Between:

685946 B.C. Ltd.

Plaintiff

And

**0773907 B.C. Ltd., 1036861 B.C. Ltd, 1129354 B.C. Ltd., and
Randeep Nijjar also known as Nick Nijjar**

Defendants

And

Randeep Nijjar also known as Nick Nijjar

Third Party

Before: The Honourable Justice Girn

Reasons for Judgment on Costs

Counsel for the Plaintiff:

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Ltd.:

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Self represented Defendant:

R. Nijjar

Written submissions received from Plaintiff:

July 5, 2024

Place and Date of Judgment:

Vancouver, B.C.
September 12, 2024

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Introduction

[1] These are my reasons for judgment on the issue of costs, following the trial of this action. Although this trial was initially scheduled for seven days, it took over four weeks to complete.

[2] My reasons for judgment following the trial in this matter were released on June 7, 2024. They are indexed at *685946 B.C. Ltd. v. 0773907 B.C. Ltd.*, 2024 BCSC 997 (the “Reasons”). The trial involved a commercial dispute involving a number of companies controlled by individuals from the same family. The plaintiff 685946 B.C. Ltd. (“the plaintiff”) is owned by Bhupinder (Bob) Nijjar (“Bob”) and Rajinder (Raji) Nijjar (“Raji”). The defendant, Randeep Nijjar (“Nick”) is Bob and Raji’s youngest child.

[3] In regards to the corporate defendants, Nick is the sole shareholder of 1129354 B.C. Ltd. (“1129”). Bob is the sole director and shareholder of 0773907 B.C. Ltd. (“3907”) but at the material time Nick was also a director of 3907. The corporate defendant, 1036861 B.C. Ltd. (“6861”) was controlled by Nick at the material time. However, at the start of the trial, it was in receivership and was excused from the trial.

[4] As all of the relevant parties involved in these proceedings share the same surname, I will refer to them by their first names. By doing so, I mean no disrespect.

[5] In the Reasons I found the defendants, 6861 and Nick, in his capacity as the sole director of 6861 liable for breaching the terms of a loan agreement by failing to repay loans totalling \$400,000. As well, I found all of the defendants committed the tort of conversion by converting \$402,000. Having awarded \$802,000 in damages, I declined to award punitive damages.

[6] As to the issue of costs, the plaintiff sought leave and was granted leave to submit written submissions. Accordingly, I granted all parties to submit written submissions within 30 days of my judgments. None of the defendants made submissions on costs.

[7] As the successful party, the plaintiff seeks special costs of this proceeding or alternatively, costs at Scale B. It is my understanding that plaintiff only seeks costs against Nick and 1129.

[8] In the reasons that follow, I conclude that Nick and the corporate defendant, 1129 are jointly and severally liable to pay special costs to the plaintiff, as assessed by the registrar.

Background

[9] The history relevant to this application for special costs are set out in the Reasons as follows:

[9] The trial was scheduled to commence on April 3, 2023, for seven days. On the first day of the trial, an agent for Nick and 1129 attended on behalf of counsel of record, Mr. Ganapathi, seeking to adjourn the trial. Plaintiff's counsel received no advance notice of the application to adjourn and thus opposed it. This was the second time the defendants sought to adjourn the trial. Nick and 1129, then self-represented, were successful in having the first trial, before Justice Mayer on December 5, 2022, adjourned.

[10] After hearing submissions for two days on the adjournment application, I concluded that the trial would commence on April 11, 2023. At that point, it became clear that additional time would be required to complete the trial.

[11] The plaintiff commenced the calling of its case on April 11, 2023. Five additional days were added, commencing on June 12, 2023. The plaintiff called two witnesses, its principals, Bhupinder Nijjar ("Bob") and Rajinder Nijjar ("Raji"). Numerous documents were tendered, as were transcripts from Nick's examination for discovery.

[12] Nick and 1129 advised that an additional 21 days would be required because they intended to call some 22 witnesses at trial. The plaintiff advised they had not been provided with a witness list nor these witnesses' will-say statements. I note that Nick or his counsel failed to attend any of the scheduled trial management conferences and did not file trial briefs. On April 14, 2023, I heard submissions on whether Nick and 1129 ought to be permitted to call these additional witnesses. I rendered my judgment on May 29, 2023, wherein I permitted the defendants to call Nick and two additional witnesses, and not the 22 they wished to call: *685946 B.C. Ltd. v. Nijjar*, 2023 BCSC 1037.

[13] To allow the trial proceed in a more orderly fashion, I exercised my discretion and permitted Nick to represent 1129 while he himself was represented by counsel.

[14] During the trial, Nick and 1129 brought an application that I recuse myself due to an apprehension of bias. This application was later withdrawn.

- [15] The trial continued on June 12, 2023, for another five days. By the end of this week, the plaintiff had closed its case and the defendants, Nick and 1129, commenced calling evidence of their case. Rajeev Nijjar, Nick's brother ("Rajeev"), was the first witness called by the defendants. His direct examination did not complete and the trial did not conclude. Consequently, two additional weeks were scheduled commencing November 20, 2023.
- [16] I also granted leave for Nick and 1129 to bring an application to amend their pleadings. The plaintiff vehemently opposed. Once again, in exercising my discretion, a hearing was scheduled for July 7, 2023. However, Mr. Ganapathi unilaterally cancelled this date claiming that I was biased. I note that a new application on bias was never brought forward by Nick and 1129.
- [17] When the parties appeared before me for a judicial management conference on August 3, 2023, Mr. Ganapathi advised that he still intended to bring an application to amend pleadings despite cancelling the previously scheduled date.
- [18] On September 22, 2023, I heard submissions of counsel. On September 28, 2023, I declined to permit the defendants, Nick and 1129, to bring another application for leave to amend their pleadings: *685946 B.C. Ltd. v. Nijjar*, 2023 BCSC 1847.
- [19] On October 11, 2023, Nick filed a notice of intention to act in person, replacing Mr. Ganapathi. Nick then began representing himself and 1129.
- [20] On the morning of November 20, 2023, Nick failed to attend court for the continuation of the trial. A family member telephoned Supreme Court Scheduling advising that Nick was ill and could not attend. The plaintiff's counsel was not advised in advance, and only became aware of this when court commenced. The plaintiff opposed any adjournment of the trial arguing that this was yet another strategic move by Nick to delay the trial and wear down Bob and Raji, Nick's elderly parents. Relying on Rule 12-5(76) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009, the plaintiff implored the Court to continue with the trial in Nick and 1129's absence.
- [21] After carefully considering all of the circumstances, on November 23, 2023, I concluded that the trial must continue in the absence of Nick and 1129. No other evidence was heard from the defendants, Nick and 1129. As well, 3907 did not lead any evidence at trial. 6861 is in receivership and was previously excused from the trial. The plaintiff proceeded with their final argument.
- [10] I will also add that Nick and 1129 failed to comply with the *Supreme Court Civil Rules* by failing to file trial briefs and to attend trial management conferences. As a result, the plaintiff had no idea how many or who the defendants intended on calling at the trial. This, of course, did not occur until I ordered Nick and 1129 to do so.

Legal Framework

[11] It is trite that the court has inherent jurisdiction to award special costs: *MacLeod v. Harrington (Guardian of)* (1995), 14 B.C.L.R. (3d) 201 (B.C.C.A.) at para. 218.

[12] In *SHH Holdings Limited v. Philip*, 2021 BCSC 1232, Justice Basran provides a helpful summary of the legal principles around special costs, which I adopt:

[5] The standard for awarding special costs is that the conduct in question must be reprehensible. This includes scandalous and outrageous conduct and other milder forms of misconduct deserving of reproof or rebuke: *Garcia v. Crestbrook Forest Industries Ltd.* (1994), 9 B.C.L.R. (3d) 242 (B.C.C.A.) at para. 17.

[6] Special costs are punitive and intended to encompass an element of deterrence aimed at discouraging reprehensible conduct. The focus of the inquiry is on the party's blameworthiness and intent: *International Hi-Tech Industries Inc. v. FANUC Robotics Canada Ltd.*, 2007 BCSC 1724 at para. 6.

[7] This Court set out the following principles for awarding special costs in *Westsea Construction Ltd. v. 0759553 B.C. Ltd.*, 2013 BCSC 1352 at para. 73:

[73] I have undertaken a thorough review of the cases involving special costs. Having examined the authorities provided by both sides, it is apparent to me that the courts have been somewhat inconsistent in their determination of what amounts to reprehensible conduct and that those authorities must be reconciled. Based upon my review of the authorities, I have derived the following principles for awarding special costs:

- a) the court must exercise restraint in awarding special costs;
- b) the party seeking special costs must demonstrate exceptional circumstances to justify a special costs order;
- c) simply because the legal concept of "reprehensibility" captures different kinds of misconduct does not mean that all forms of misconduct are encompassed by this term;
- d) reprehensibility will likely be found in circumstances where there is evidence of improper motive, abuse of the court's process, misleading the court and persistent breaches of the rules of professional conduct and the rules of court that prejudice the applicant;
- e) special costs can be ordered against parties and non-parties alike; and
- f) the successful litigant is entitled to costs in accordance with the general rule that costs follow the event. Special costs

are not awarded to a successful party as a “bonus” or further compensation for that success.

[8] Special costs are warranted if a person knowingly misleads the court or gives false evidence on matters in question: *Westsea Construction Ltd.* at paras. 65–72; *Chudy v. Merchant Law Group*, 2009 BCCA 93 at paras. 9–10. Evidence is “false” when it is knowingly untrue, not just erroneous: *Brown v. Lowe*, 2002 BCCA 7 at para. 149.

[9] “There can be no question that a person who attempts to perpetrate a deceit on the court is guilty of reprehensible conduct.”: *Le Soleil Hospitality Inc. v. Louie*, 2011 BCCA 305 at para. 125, leave to appeal to SCC refused, [2011] S.C.C.A. No. 442.

[10] In addition to the more serious forms of reprehensible conduct, such as misleading or deceiving the court and giving false evidence under oath, special costs may also be awarded against an individual who:

- a) withheld admissions and denied facts;
- b) delayed pre-trial procedures;
- c) fail to attend for examination for discovery;
- d) conducted themselves in an unreasonable or high-handed manner;
- e) engaged in obfuscation;
- f) wasted court time by mischaracterizing the evidence or raising trivial issues;
- g) pursued a meritless claim with reckless disregard to the truth;
- h) made improper allegations of fraud, conspiracy or breach of fiduciary duty;
- i) made the resolution of an issue far more difficult than it should have been;
- j) brought a proceeding for an improper motive;
- k) maintained unfounded allegations of fraud or dishonesty; and
- l) pursued claims frivolously or without foundation.

Westsea Construction Ltd. at paras. 82 and 85; *Mayer v. Osborne Contracting Ltd.*, 2011 BCSC 914 at para. 11.

[11] The above actions will not always give rise to an inference of obstructive conduct: *Westsea Construction Ltd.* at para. 82.

[12] A litigant’s decision to represent themselves in an action is not a basis for declining to award special costs were that individual’s conduct was reprehensible: *M.P. v. N.M.*, 2009 BCSC 40 at para. 30.

Discussion

[13] It must be remembered that the court must exercise restraint in awarding special costs.

[14] While not all of Nick’s and 1129’s conduct falls within the “reprehensible” category, in my view, there are some aspects which are egregious and relevant to my consideration of whether special costs should be awarded.

[15] The first is their late attempt to amend their pleadings and the actions arising from this. Although not pleaded in their response to the civil claim, Nick and 1129, alleged fraud on the part of Bob, Raji and their eldest son, Rajeev Nijjar and sought to amend their pleadings on this issue. Nick and 1129 also sought to add nine additional parties to the action.

[16] The application to amend pleadings was scheduled to be heard during the first week of July, 2023. Given that I had not yet made a ruling on the application, I ruled that Nick and 1129 would not be permitted to cross examine the plaintiff’s witnesses on the issue of fraud. Despite my ruling, Nick (through counsel) repeatedly asked questions relating to fraud and on other irrelevant matters.

[17] Nick’s counsel also repeatedly disregarded my rulings on the inappropriateness of his questions. The plaintiff points to two examples of irrelevant questioning by Nick’s counsel during his cross examination of Raji wherein she was asked if she had difficult childbirth experiences and whether she had a dowry when she was married. As well, much of the cross examination of the plaintiff’s two witnesses was taken up by counsel repeatedly asking the same questions that had been asked of them during their direct examination.

[18] The second egregious conduct during the trial relates to multiple applications being advanced by Nick and 1129 only to be abandoned later on. For example, on June 14, 2023, Mr. Ganapathi (Nick’s counsel) advised that he wished to withdraw as counsel once again. The issue was addressed in the afternoon but it ultimately not pursued. Rather than making an application to withdraw, an application that I recuse myself on account of bias was made. This application was stood down until the next day. On June 15, 2023, submissions were made and after I brought a recent decision of this Court on recusal to counsel’s attention, Mr. Ganapathi acknowledged the application was without merit and withdrew it.

[19] While still represented by counsel, Nick and 1129 sought to appeal my ruling on the number of witnesses they would be permitted to call. The Court was not advised of this and the plaintiff's counsel, its witnesses and the Court waited for Mr. Ganapathi to attend Court to continue with the trial. No permission was sought by the defendants to adjourn or stand down the trial while Nick and 1129 could advance their appeal. The appeal was dismissed by the Court of Appeal.

[20] The trial was further complicated when Nick and 1126 abruptly cancelled the scheduled date for their application to amend pleadings, citing that I was biased, for which an application was not ever pursued. After abandoning the first application to amend, Nick and 1129 then sought leave once again to amend their pleadings. I ultimately declined to do so. All of this required the plaintiff to incur additional legal fees responding to and appearing at these applications.

[21] Finally, when the trial was set to resume for its final two weeks, Nick was unrepresented and did not attend. He provided statements that he had a viral infection though later indicated it was bacterial. He was asked repeatedly to appear virtually or send someone on his behalf, which he did not do so. I found it was simply another attempt by Nick to delay the trial. The plaintiff submits that this last-ditch attempt at delay must be considered in terms of reprehensible conduct.

[22] In my assessment of whether special costs should be awarded I have considered that "reprehensibility" captures different kinds of misconduct. I am satisfied that Nick and 1129 wasted court time including raising trivial issues. I indulged Nick in allowing him to pursue numerous applications only to be abandoned at the last minute. This, in my view, is reprehensible and cannot be condoned.

[23] Finally, I find Nick's improper allegations of fraud against Bob, Raji and Rajeev, who was not a party in these proceedings a further instance of reprehensible conduct that also cannot be condoned.

[24] All of this resulted in a 7 day trial taking almost four weeks to complete during which the plaintiff was required to respond on short or no notice to multiple applications. As I have noted earlier, these included:

- a. the adjournment applications (in December and April);
- b. the withdrawal application;
- c. the witness application;
- d. the appeals and non-attendance at trial;
- e. the second withdrawal application;
- f. the recusal application; and
- g. the final non-attendance at trial.

[25] While Nick was self represented at the end, I cannot say that his actions were due to his ability to grasp complexities of the legal system. For most of the trial, Nick was represented by counsel to whom he gave instructions. A lay litigant cannot use his status as such as a "sword" to "frustrate court institutions and waste judicial and litigant resources, all the while pleading he is a misunderstood, victimized innocent": *Chutskoff Estate v. Bonora*, 2014 ABQB 389 at para 126.

[26] In all of the circumstances, the manner in which Nick and 1129 conducted themselves throughout the trial was reprehensible. I have no hesitation in concluding that Nick and 1129 failed to comply with the *Rules* of this Court, intentionally delayed and elongated the trial and disrespected the Court on numerous occasions.

[27] Accordingly, the plaintiff is entitled to special costs.

"Girn J."