IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Lew v. Bank of Montreal,* 2024 BCSC 59

Date: 20240112
Docket: S230736
Registry: Vancouver

Between:

Karen Wai King Lew

Plaintiff

And

Bank of Montreal and Fulton & Company LLP

Defendants

Before: The Honourable Justice Gropper

Reasons for Judgment

The Plaintiff, appearing in person:	K. Lew
Counsel for the Defendant, Bank of Montreal:	R. McGowan B. Fahey
Counsel for the Defendant, Fulton & Company LLP:	N. Knezevic
Place and Date of Hearing:	Vancouver, B.C. November 29, 2023
Place and Date of Judgment:	Vancouver, B.C. January 12, 2024

Notice of Application

[1] The defendants apply to strike the plaintiff's notice of civil claim filed against them on January 31, 2023. They seek special costs.

The Parties

[2] The plaintiff is a respondent in foreclosure proceedings that the Bank of Montreal initiated in respect of the property in action number H210219 (*Bank of Montreal v. Karen Wai King Lew at al.*) commenced April 23, 2021.

[3] Fulton & Company LLP is a law corporation in Vancouver, BC.

[4] The Bank of Montreal is the first mortgagee on residential property owned by Ms. Lew and located at 2716 Waverley Ave., Vancouver, BC V5S 1E8 (the "property").

[5] Fulton acted solely for the Bank of Montreal as its solicitors in the foreclosure proceedings.

Foreclosure Proceedings

[6] On September 2, 2021 the Bank of Montreal obtained an order *nisi* expiring March 2, 2022 (the "redemption date").

[7] On April 28, 2022 the Bank of Montreal obtained an order for conduct of sale of the property to come into effect on May 26, 2022.

[8] On June 22, 2022, Ms. Lew brought an appeal of the order for conduct of sale against the Bank of Montreal and another party, claiming that:

1. the debt was forgiven pursuant to the "laws" and the doctrine of *NESARA/GESARA*, acronyms standing for *National Economic Security and Reformation Act* and *Global Economic Security and Reformation Act* enacted by former US President Donald Trump that had cancelled all worldwide debt; and

2. Master Robertson, who heard the application for conduct of sale, was biased because she knew her former law firm's foreclosure practice would end under the law of *NESARA*/*GESARA* and because Master Robertson was a friend of counsel for the Bank of Montreal.

[9] Justice Matthews heard and dismissed the plaintiff's appeal on July 12, 2022. Specifically, at para. 18, Justice Mathews stated:

> There is no basis on which to conclude that Master Robertson was clearly wrong in the order she made. Ms. Lew did not lead before Master Robertson and has not led before me evidence that the mortgage had been forgiven. She did not attempt to persuade Master Robertson, and she has not persuaded me, that NESARA/GESARA principles are part of the law governing creditor, debtor or foreclosure proceedings in British Columbia.

[10] Justice Matthews concluded that Ms. Lew had not established that Master Robertson was clearly wrong or biased or that there was an apprehension of bias. She ordered costs at Scale A, payable by Ms. Lew to both the respondents on that application, one of whom was the Bank of Montreal.

[11] Ms. Lew appealed to the Court of Appeal. Her appeal was heard and determined on October 20, 2022. Justice Horsman described Ms. Lew's position as the same as she had argued before Justice Matthews. Justice Horsman determined that Justice Matthews' conclusion regarding the effect of *NESARA*/*GESARA* was not an error in rejecting Ms. Lew's arguments based on that theory. She also determined that there was no merit to Ms. Lew's allegation of bias against Master Robertson.

[12] On August 7, 2023, Master Bilawich ordered vacant possession by October 17, 2023. Ms. Lew appealed that order.

[13] On October 13, 2023, Justice Blake extended the stay of the Bilawich order to January 7, 2024.

[14] Justice Wilkinson heard and determined Ms. Lew's appeal of the Bilawich order on November 6, 2023. Ms. Lew repeated her assertions regarding *NESARA/GESARA*. Justice Wilkinson noted that there was no evidence before

Master Bilawich and there was no evidence on the appeal that the mortgage was forgiven.

[15] Justice Wilkinson reiterated what the previous judgment in the matter had found: the *NESARA/GESARA* principles, if they exist, are not part of the law governing creditor, debtor or foreclosure proceedings in British Columbia. She also rejected Ms. Lew's assertions that Master Bilawich was clearly wrong, biased or that there could be an apprehension of bias.

[16] In respect of costs, Justice Wilkinson found that special costs against Ms. Lew were justified, stating at paras. 20-22:

> [20] With regard to costs, Ms. Lew was ordered by Justice Blake not to make submissions based on NESARA/GESARA on this appeal and to comply with the order of Master Robertson. Her oral submissions before me on NESARA/GESARA were very limited. However, Ms. Lew admits she has refused to allow anyone to enter her property.
>
> [21] Most concerning, Ms. Lew repeats in her written allegations of criminal conduct (fraud, theft, and attempted murder), by the bank and its counsel, continuing to do so in her oral submissions. Her evidence in support of these allegations is a series of observations of unknown persons driving by her home and taking pictures, as well as the conduct of the proceedings generally. This is reprehensible conduct worthy of rebuke by way of special costs.
>
> [22] The bank will have its costs on this appeal as special costs to be assessed.

Analysis

[17] As noted, on January 31, 2023 the plaintiff filed a notice of civil claim. In the notice of civil claim Ms. Lew re-argues the theory of *NESARA/GESARA*. She also alleges that Fulton and Bank of Montreal are stalking, trespassing, harassing, extorting, scamming and trying to steal her home and kill her.

[18] Several paragraphs of the notice of civil claim reiterate Ms. Lew's position on the application of *NESARA/GESARA* to the foreclosure proceedings. The remaining paragraphs of the notice of civil claim address Ms. Lew's assertions of "Criminal actions that happened…" These include allegations of harassment, stalking, trespassing, involvement in organized crime and with gangsters, and fraud.

[19] The defendants' applications rely on the doctrine of issue estoppel and the concept of finality. They also rely on *Supreme Court Civil Rules*, B.C. Reg. 168/2009, Rules 9-5(1), 9-6 and 9-7. These rules provide the basis for the court to determine if a notice of civil claim ought to be struck.

NESARA/GESARA

[20] I need not dwell on the assertions based upon *NESARA/GESARA*. These have been rejected and dismissed by several justices of this court and by Justice Horsman of the Court of Appeal.

[21] Rule 9-7 provides for a summary trial in an action where a response to civil claim has been filed.

[22] The defendants assert that it is appropriate to conduct a summary trial and dismiss the claim where it is frivolous, vexing, an abuse of process and barred by *res judicata*.

[23] In *Simon v. Canada (Attorney General)*, 2015 BCSC 924, aff'd 2016 BCCA 52, at para. 97, Justice Donegan set out a list of non-exhaustive list of principles to determine if the action ought to be dismissed on those bases:

> The nature of a vexatious action was described by Henry J. in *Re Lang Michener* (1987), 37 D.L.R. (4th) 685 (Ont. H.C.J.) at 691:
>
> > From these decisions the following principles may be extracted:
> >
> > (a) the bringing of one or more actions to determine an issue which has already been determined by a court of competent jurisdiction constitutes a vexatious proceeding;
> >
> > (b) where it is obvious that an action cannot succeed, or if the action would lead to no possible good, or if no reasonable person can reasonably expect to obtain relief, the action is vexatious;
> >
> > (c) vexatious actions include those brought for an improper purpose, including the harassment and oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights;
> >
> > (d) it is a general characteristic of vexatious proceedings that grounds and issues raised tend to be rolled forward into subsequent actions and repeated and supplemented, often with actions brought against the lawyers who have acted for or against the litigant in earlier proceedings;

> (e) in determining whether proceedings are vexatious, the court must look at the whole history of the matter and not just whether there was originally a good cause of action;
>
> (f) the failure of the person instituting the proceedings to pay the costs of unsuccessful proceedings is one factor to be considered in determining whether proceedings are vexatious;
>
> (g) the respondent's conduct in persistently taking unsuccessful appeals from judicial decisions can be considered vexatious conduct of legal proceedings.

[24] In *Danyluk v. Ainsworth Technologies Inc.,* 2001 SCC 44, the Court explained the principles of issue estoppel and finality at paras. 18 and 19:

> 18 The law rightly seeks a finality to litigation. To advance that objective, it requires litigants to put their best foot forward to establish the truth of their allegations when first called upon to do so. A litigant, to use the vernacular, is only entitled to one bite at the cherry. The appellant chose the ESA as her forum. She lost. An issue, once decided, should not generally be re-litigated to the benefit of the losing party and the harassment of the winner. A person should only be vexed once in the same cause. Duplicative litigation, potential inconsistent results, undue costs, and inconclusive proceedings are to be avoided.
>
> 19 Finality is thus a compelling consideration and judicial decisions should generally be conclusive of the issues decided unless and until reversed on appeal…

[25] I must determine, as a matter of discretion, whether issue estoppel arises or whether there is "something in the circumstances of this case such that the usual operation of the doctrine of issue estoppel will work an injustice" (*Danyluk* at para. 63).

[26] Ms. Lew's assertions regarding the application of *NESARA/GESARA* have been rejected each time Ms. Lew has been before the courts. Justice Blake warned her not to raise these assertions again, as a condition of extending the Bilawich order. Justice Wilkinson awarded special costs against her for doing so.

[27] Despite this, Ms. Lew reiterates them over and over in her notice of civil claim and in her application response before me.

[28] These allegations meet all of the criteria listed in *Simon*.

[29] I exercise my discretion in finding that the doctrine of issue estoppel applies.

Allegations of Criminal Activities

[30] In respect of the allegations regarding alleged criminal activities, these were considered by Justice Wilkinson as the basis for ordering special costs against Mr. Lew. Justice Wilkinson found that Ms. Lew's "evidence in support of these allegations is a series of observations of unknown persons driving by her home and taking pictures, as well as the conduct of the proceedings generally. This is reprehensible conduct" (at para. 21).

[31] Ms. Lew's allegations in this regard fail to state any basis of any cause of action at law against either defendant and have no air of reality. There is no basis for Ms. Lew to seek damages of $10 million, or at all.

[32] Rules 9-5(1) and 9-6(5) provide:

> **Rule 9-5 — Striking Pleadings**
>
> **Scandalous, frivolous or vexatious matters**
>
> (1) At any stage of a proceeding, the court may order to be struck out or amended the whole or any part of a pleading, petition or other document on the ground that
>
> (a) it discloses no reasonable claim or defence, as the case may be,
>
> (b) it is unnecessary, scandalous, frivolous or vexatious,
>
> (c) it may prejudice, embarrass or delay the fair trial or hearing of the proceeding, or
>
> (d) it is otherwise an abuse of the process of the court,
>
> and the court may pronounce judgment or order the proceeding to be stayed or dismissed and may order the costs of the application to be paid as special costs.
>
> …
>
> **Rule 9-6 — Summary Judgment**
>
> **Power of court**
>
> (5) On hearing an application under subrule (2) or (4), the court,
>
> (a) if satisfied that there is no genuine issue for trial with respect to a claim or defence, must pronounce judgment or dismiss the claim accordingly,
>
> (b) if satisfied that the only genuine issue is the amount to which the claiming party is entitled, may order a trial of that issue or pronounce judgment with a reference or an accounting to determine the amount,

> (c) if satisfied that the only genuine issue is a question of law, may determine the question and pronounce judgment accordingly, and
>
> (d) may make any other order it considers will further the object of these Supreme Court Civil Rules.

[33] I find that it is plain and obvious that the plaintiff's claim discloses no reasonable cause of action. The pleadings are to be taken to be true for the purpose of an application to strike. The pleadings do not establish a cause of action and do not advance a claim known in law or are groundless and fanciful: *Olenga v. British Columbia*, 2015 BCSC 1050 at para. 17.

[34] In my view, it is plain and obvious that the plaintiffs' claims must be struck under Rule 9-5(1)(b) as well. These claims are frivolous, vexatious, and scandalous. The pleadings are without substance, fanciful, groundless, and will waste the time of the court. They are confusing that it is difficult, if not impossible, for the defence to understand the case to be met in court. The notice of civil claim does not meet any standard which enables a proper response to be filed by the defendants.

[35] Mrs. Lew’s pleading in respect of alleged criminal activities are also struck under Rule 9-5(1)(d) on the basis that constitute an abuse of process. This is also addressed in *Simon* at paras. 101:

> Abuse of process under this subrule is a flexible doctrine allowing 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.

[36] Fulton solely represented the Bank of Montreal, the party adverse in interest to the plaintiff in the foreclosure proceedings. Lawyers do not owe a duty of care to the opposing party. Any allegations that counsel for the opposing party has misled or intentionally deceived the court resulting in decisions or rulings unfavourable to the claimant do not found actual breaches of any private duty owed to the plaintiff: *Pearlman v. Critchley*, 2012 BCSC 1830 at para. 44. Thus, those allegations are struck as an abuse of process.

Conclusion

[37] I must find that Ms. Lew's pleadings are an attempt to use the court's process dishonestly and unfairly for some ulterior and improper purpose. She is adamantly opposed to the foreclosure proceedings and has attempted to forestall them at every opportunity and by whatever means. The allegations raised in her notice of civil claim are to that end.

[38] It is time to bring Ms. Lew's unfounded allegations and her repeated actions to an end.

[39] The notice of civil claim is struck in its entirety.

[40] For the reasons that were given by Justice Wilkinson, I find Ms. Lew's conduct is worthy of rebuke. I order that the defendants are entitled to special costs of the proceeding and of this application, to be assessed.

[41] I dispense with Ms. Lew's signature on the formal order.

"Gropper J."