IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Nourifard v. Emadzadeh,*
2023 BCSC 1940

Date: 20231103
Docket: S201132
Registry: Vancouver

Between:

Saeid Nourifard

Plaintiff

And

Navid Emadzadeh and
Novarc Technologies Inc.

Defendants

Before: The Honourable Justice Funt

Reasons for Judgment

Counsel for the Plaintiff:	A. Soliman
Counsel for the Defendant, Navid Emadzadeh:	A. Beddoes S. Gomez
Counsel for the Defendant, Novarc Technologies Inc.:	K.A. Maw T. Latowsky
Place and Dates of Hearing:	Vancouver, B.C. October 18–19, 2023
Place and Date of Judgment:	Vancouver, B.C. November 3, 2023

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1. INTRODUCTION

[1] A five-day trial in this action is set to begin on November 27, 2023.

[2] On February 3, 2020, the plaintiff commenced legal proceedings.

[3] The defendants have each applied to dismiss the action on the basis that the action was brought outside the two-year limitation period.

[4] For the reasons that follow, I find that the plaintiff brought the action more than two years after the date of discovery on November 21, 2017.

[5] The plaintiff's claims against the defendants are dismissed.

2. THE PLAINTIFF'S CLAIM

[6] In November 2017, the plaintiff became a resident of British Columbia. Before that time, he was a resident of Iran.

[7] At all relevant times, the personal defendant was a British Columbia resident.

[8] At all relevant times, the corporate defendant was a company duly incorporated under the laws of British Columbia.

[9] The plaintiff first brought the proceeding by filing a petition on February 3, 2020. On August 13, 2021, Justice Tucker ordered that the petition be converted into a notice of civil claim.

[10] On August 17, 2021, the plaintiff filed his notice of civil claim.

[11] The plaintiff's key pleaded facts read:

> 9. In November 2016, [the personal defendant] explained to the Plaintiff that, given the Plaintiff's status in Canada, the Plaintiff cannot own shares in a Canadian company and suggested that he holds the Plaintiff's shares in trust. Both the Plaintiff and [the personal defendant] agreed to this arrangement.
>
> 10. On or about December 8, 2016, [the corporate defendant] received $250,000 from [the personal defendant] and the Plaintiff representing

> $225,000 for the Plaintiff's 90,000 shares (the "Shares") and $25,000 for [the personal defendant's] shares.
>
> 11. On or about December 8, 2016, [the corporate defendant] issued 100,000 Common shares to [the personal defendant] with a share certificate number 22.
> 12. The price of each share was $2.50 CAD.
> 13. At all material times, [the corporate defendant] knew that the Shares were held by [the personal defendant] in trust for the Plaintiff.
> 14. Between December 2019 and January 2020 the Plaintiff demanded that [the personal defendant] and [the corporate defendant] transfer the Shares to the Plaintiff; however, [the corporate defendant] and [the personal defendant] refused. [The corporate defendant] also demanded the consent of [the personal defendant] and [the personal defendant] withheld his consent.
>
> […]
>
> 17. The parties had an agreement that [the corporate defendant] would sell 90,000 shares to the Plaintiff, [the personal defendant] would hold these shares in trust for the Plaintiff, and that [the corporate defendant] and [the personal defendant] would transfer the Shares to [the personal defendant] upon the Plaintiff's request. [The corporate defendant] and [the personal defendant] breached their agreement with the plaintiff [by] refusing to transfer the Shares to the Plaintiff.
> 18. By agreeing to hold the Shares in trust for the Plaintiff, [the personal defendant] agreed to act as trustee and by refusing to transfer the Shares, [the personal defendant] breached his trust obligations, including fiduciary duties and duty of loyalty, to the Plaintiff.
> 19. By marketing and selling the Shares to the Plaintiff, [the corporate defendant] undertook fiduciary duties toward the Plaintiff as well as duty of loyalty. By refusing to transfer the Shares to the Plaintiff, [the corporate defendant] breached its fiduciary duties to the Plaintiff.

3. THE *LIMITATION ACT*

[12] The governing statutory provisions are found in ss. 6(1), 8, 12(2) and (3) of the *Limitation Act*, S.B.C. 2012, c. 13. These provisions read (in part):

> 6 (1) Subject to this Act, a court proceeding in respect of a claim must not be commenced more than 2 years after the day on which the claim is discovered.
>
> […]
>
> 8 Except for those special situations referred to in sections 9 to 11, a claim is discovered by a person on the first day on which the person knew or reasonably ought to have known all of the following:
>
> (a) that injury, loss or damage had occurred;

> (b) that the injury, loss or damage was caused by or contributed to by an act or omission;
>
> (c) that the act or omission was that of the person against whom the claim is or may be made;
>
> (d) that, having regard to the nature of the injury, loss or damage, a court proceeding would be an appropriate means to seek to remedy the injury, loss or damage.
>
> […]
>
> 12 […]
>
> (2) A fraud or trust claim is discovered when the beneficiary becomes fully aware
>
> (a) that injury, loss or damage had occurred,
>
> (b) that the injury, loss or damage was caused by or contributed to by the
>
> (i) fraud,
>
> (ii) fraudulent breach of trust,
>
> (iii) conversion, or
>
> (iv) other act or omission
>
> on which the claim is based,
>
> (c) that the fraud, fraudulent breach of trust, conversion or other act or omission was that of the person against whom the claim is or may be made, and
>
> (d) that, having regard to the nature of the injury, loss or damage, a court proceeding would be an appropriate means to seek to remedy the injury, loss or damage.
>
> (3) For the purposes of subsection (2), the burden of proving that a fraud or trust claim has been discovered rests on the trustee.

[13] I have previously noted that the two-year limitation period "evinces a legislative intent that society has a particular interest in the timely resolution of disputes": *Arbutus Environmental Services Ltd. v. South Island Aggregates Ltd*., 2017 BCSC 1 at para. 26.

[14] In *Aubichon v. Grafton*, 2022 BCCA 77, Justice Voith, writing for our Court of Appeal, stated:

> [36] Importantly, counsel for Mr. Aubichon accepts that under the common law discoverability rule an individual's knowledge of the law or awareness of the existence of a potential cause of action is irrelevant to when a limitation period begins to run. Error or ignorance of the law or the legal consequences

> of the facts in issue do not postpone the running of a limitation period as individuals are presumed to know the law. This has been the law in British Columbia for many years: *Levitt v. Carr* (1992), 66 B.C.L.R. (2d) 58 at 72, 1992 CanLII 1086 (C.A.), leave to appeal to SCC ref'd, 23034 (24 September 1992); *Vogel v. Vancouver Island Power Co.*, [1926] 2 D.L.R. 969 at 971, 1926 CanLII 271 [(B.C.S.C.)].
>
> […]
>
> [40] There are many reasons that a particular individual may not know or appreciate that, as a result of certain events, a cause of action is available to them. Individuals may be unsophisticated or uneducated, they may have immigrated from a country with a very different legal regime or they may, as it is alleged in this case, not appreciate that a legal remedy is available to them on account of their background and personal circumstances. Such considerations did not, at common law, prevent a limitation period from beginning to run. Furthermore, based on several of the authorities I have referred to, the fact a potential claimant does not appreciate the legal significance of certain facts does not postpone the commencement of a limitation period under the statutory discoverability provisions in other Canadian provinces.

4. RULE 9-6 – SUMMARY JUDGMENT

[15] In resolving the application before me, I have used the summary judgment rules set forth in Rule 9-6 of our *Supreme Court Civil Rules*.

[16] Subrules 9-6(4) and (5) read:

> (4) In an action, an answering party may, after serving a responding pleading on a claiming party, apply under this rule for judgment dismissing all or part of a claim in the claiming party's originating pleading.
>
> (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.

[17] In *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2021 BCSC 348, rev'd on other grounds 2022 BCCA 163, leave to appeal ref'd, [2022] S.C.C.A. No. 262, Chief Justice Hinkson stated:

> [61] The plaintiffs take the position that their application involves a "fundamentally legal" inquiry that can be determined on a limited record. They seek relief under either Rule 9-6(5) (summary judgment) or Rule 9-7(2) (summary trial) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009.
>
> [62] Where a plaintiff applies for summary judgment, the court must pronounce judgment if it is satisfied that there is no genuine issue for trial or, if it is satisfied that the only genuine issue is a question of law, the court may determine the question and pronounce judgment accordingly.
>
> [63] Under Rule 9-6, any party can adduce evidence and each side is expected to "put its best foot forward": see *Canada (Attorney General) v. Lameman,* 2008 SCC 14 at para. 11.
>
> [64] The Attorney General and motor vehicle defendants contend that relief under Rule 9-6(5)(c) is unavailable to the plaintiffs.
>
> [65] I am unable to agree with the Attorney General that if any recourse to weighing the evidence is required, summary judgment cannot be granted. In *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd*. (1989), 36 B.C.L.R. (2d) 202 [C.A.], Chief Justice McEachern held that the predecessor to Rule 9-6 was designed for the express purpose of permitting summary judgment even though there was conflicting affidavit evidence.

[18] In *4 Corners Properties Ltd. v. Boffo Developments (Smithe) Ltd.*, 2013 BCSC 1926, Justice Savage, as he then was, stated:

> [23] A summary judgment motion cannot be defeated by vague references to what may be adduced in the future if the matter is allowed to proceed. The determination made must be based on the pleadings as framed and the evidence before the court, not on suppositions about what might be proven if the claim is allowed to proceed: [*Canada (Attorney General) v.*] *Lameman*, [2008 SCC 14] at para. 19.

5. THE DATE OF DISCOVERY OF THE CLAIM

[19] The plaintiff is a businessperson who resided in Iran in 2016.

[20] On November 21, 2017, the plaintiff moved to Canada "with the intention of staying permanently".

[21] In response to the personal defendant's request for particulars with respect to paragraph 17 of the notice of civil claim, the plaintiff stated (in part):

> The agreement was that [the personal defendant] would hold the shares in his name until the Plaintiff came to Canada permanently, at which time, the shares would be placed in the Plaintiff[‘s] name. There is not [sic] written agreement. [The personal defendant] told the Plaintiff that this was the best and easiest option for the Plaintiff since he was a non-resident of Canada and his visa may expire. [The personal defendant] later informed the Plaintiff this also allowed for some sort of discount or credit, but the particulars of the credit were not fully understood by the Plaintiff. The agreement was with [the personal defendant], for the benefit of [the corporate defendant], and it was known and understood by [the corporate defendant].

[22] On November 21, 2017, after the plaintiff had come to permanently live in Canada, the plaintiff and the personal defendant met and discussed the plaintiff’s shares in the capital of the corporate defendant. The plaintiff came away from the meeting “surprised”, “very worried”, and having “lost my trust” in the personal defendant, as he stated at his examination for discovery held on July 24, 2023.

[23] The plaintiff’s pleadings do not refer to the November 21, 2017 meeting. In his notice of civil claim, the plaintiff says that between December 2019 and January 2020, he demanded the transfer of the shares and the defendants refused. I understand that the plaintiff says the date of discovery would have been in this period.

[24] The corporate defendant’s Central Securities Register shows that on December 8, 2016, 100,000 common shares without par value were issued to the personal defendant. This accords with paragraph 11 of the notice of civil claim.

[25] Key questions and answers from the plaintiff’s July 24, 2023 examination for discovery are set forth below. In the transcript, Navid is the personal defendant and Saeid is the plaintiff. Soroush and Reza are main principals of Novarc, the corporate defendant.

> 288 Q Did you and Navid discuss if there would ever be a time that you would become the registered owner of those shares?
>
> A Yes, we did.
>
> 289 Q What was discussed?
>
> A On November 21st, 2017, I came back to Canada and I had the intention of staying here. So, I asked Navid that he should transfer the shares in my name or register them in my name,

and he said that he had an agreement with the Government of Canada that not allow him to transfer those funds for five years. And I was surprised to hear that.

[…]

307 Q Okay. Pardon me. That's the meeting I'm talking about.

So, at that meeting at the end of 2017, when he first told you about this prohibition -- and this was the first time you learned of it -- did you ask him why he hadn't mentioned this in 2016?

A Yes. Naturally, I did.

308 Q And what did he say?

A He said that he had suffered a lot of losses in this process and that we needed to have a meeting and discuss it with each other and it -- and that's why I could not -- I cannot transfer the shares to you. It made me be very worried and at that point I lost my trust in him. He told me that his friends have told him that with what you have done for Saeid, you have to charge him a high percentage or a large sum of money, because you have done such a great job for him.

309 Q How did you guys have this conversation? Was it in person, or on the phone, or via email or message?

A In person.

310 Q Did you do any research into the reasons that he had told you he was prohibited from transferring those shares for five years?

A I asked him himself. He told me that because he had got 30-percent tax return.

THE INTERPRETER: And I said, do you mean tax credit? And he says that there is another specific specialized term for that, maybe not even tax credit.

THE WITNESS: So because he had got 30 percent --

THE INTERPRETER: Whatever, that tax something is.

THE WITNESS: -- that he could not transfer ownership of the shares to me unless he returned that money to the government. So, he's not allowed to sell the shares unless he gave the government the money back. And later I asked Soroush and I found out from Soroush and Reza that that was true; that he could not transfer -- that Navid could not transfer the shares to me for five years unless he returned the money he had got from the government.

CNLS K. MAW:

311 Q Did he also tell you at that time that he was not transferring it because he felt that he was entitled to funds from helping you? Was that part of your evidence?

A His friends have told him that he had any entitlement to the shares and he had believed them.

312 Q But how do you know this? Is that because Navid told you that this is what his friends said?

A Yes.

313 Q And so you told me that that was concerning to hear, so what did you do next when you heard this from Navid?

THE INTERPRETER: Sorry. What was the question again?

CNSL K. MAW:

314 Q What did you do next?

A Afterwards he did not take any of my calls or return -- or answer my messages. So, I went to Novarc in person and told Soroush and Reza about my problem. And we had a meeting and I told Soroush and Reza about my problem and Soroush became very unhappy about this situation. And Reza said that he would talk to Navid and would convince him to return the shares to me.

315 Q How much time passed between when Navid told you these things at the end of 2017, to when you went to go see Soroush and/or Reza?

A So it was one and a half years between the time that I learned from Navid that he could not transfer the shares to me up until the meeting I had with Soroush and Reza and I discussed my problem with them. It was more than one and a half years.

THE INTERPRETER: So, I think it was August or September 2019 when he had this meeting with Reza and Soroush.

[26] The examination for discovery shows that when the plaintiff came to Canada on November 21, 2017 with an intention to stay permanently, he requested the personal defendant to transfer the shares to him and the personal defendant refused [XFD Q289, Q307, Q308]. According to the plaintiff, the personal defendant refused to transfer the shares because he (the personal defendant) had a related entitlement to them [XFD Q311].

[27] In sum, on November 21, 2017, the following had occurred:

a) the plaintiff had come to Canada with the intention to stay permanently;

b) the plaintiff had requested that the shares be transferred to him;

c) the plaintiff knew that the personal defendant had refused to do so; and

d) the plaintiff knew the personal defendant claimed that he had an entitlement in relation to the shares.

[28] The plaintiff was also a businessperson without a written contract for a transaction involving significant funds. He was also “surprised”, “very worried”, and had “lost my trust” in the personal defendant.

[29] At the examination for discovery, the plaintiff was not re-examined to explain why he waited over a year-and-a-half before he went to see the principals of the corporate defendant, Soroush and Reza: *Supreme Court Civil Rules*, R. 7-2(17).

[30] The particulars set forth above at paragraph 21 show that a material term of the pleaded oral agreement was that when the plaintiff “came to Canada permanently”, the 90,000 shares would be placed in the plaintiff’s name. However, this did not occur on or shortly after November 21, 2017. I adopt Ms. Maw’s submission that November 21, 2017 is an objective measure of the date of discovery.

[31] With respect to a breach of trust, on November 21, 2017, according to the plaintiff, the personal defendant had expressed to the plaintiff an entitlement in relation to the shares.

[32] If one loses one’s trust in his or her trustee, one does not accept what the trustee may say or wait for matters to unfold. I find the plaintiff’s explanations in his October 10, 2023 affidavit filed in response to the current applications are not credible in the context of his July 24, 2023 examination for discovery.

[33] I find that November 21, 2017 was the date of discovery for either a claim for a breach of contract or a breach of trust (or the doctrines of express trust, implied trust, resulting trust, and constructive trust listed under Part 3: Legal Basis in the notice of civil claim).

[34] In sum, the date of discovery was November 21, 2017. The plaintiff commenced proceedings on February 3, 2020, which is more than two years after the date of discovery. Accordingly, the plaintiff's claims must be, and are, dismissed.

6. THE PERSONAL DEFENDANT'S JANUARY 16, 2020 NOTICE OF CIVIL CLAIM

[35] For completeness, I will note the personal defendant's January 16, 2020 notice of civil claim in which he claims against the plaintiff in the action before me.

[36] The plaintiff in the action before me says that the January 16, 2020 notice of civil claim contains admissions favourable to his argument that his notice of civil claim should not be dismissed based on a limitation period.

[37] In *arguendo,* if there were an admission, I fail to see how at law an admission made after the expiration of a limitation period may breathe life into a dead claim. The legislative intent of ss. 6 and 12 of the *Limitation Act* is to ensure the timely resolution of disputes without some subsequent re-opening of matters.

[38] It may be that the matters in the current action may give rise to one or more defences in relation to the personal defendant's January 16, 2020 notice of civil claim and may have some life in that action. For the purposes of the application before me, such does not take away from the fact that the plaintiff failed to bring his claims in this action within the requisite two-year period following the date of discovery.

7. CONCLUSION

[39] The plaintiff's action is dismissed.

8. COSTS

[40] The applicants will have their respective costs for the entire proceeding at Scale B.

"Funt J."