

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Rangi v. Malhi*,
2023 BCSC 1731

Date: 20230907
Docket: S02514
Registry: Abbotsford

Between:

Gurmeet Kaur Rangi

Plaintiff

And:

Harpreet Kaur Malhi

Defendant

And:

Amarjit Singh Dhindsa

Third Party

Before: The Honourable Justice Dley

Oral Reasons for Judgment

In Chambers

Counsel for the Defendant:

A.S. Parhar

Counsel for the Third Party:

M.A.J. Ferreira

No other appearances

Place and Date of Hearing:

Abbotsford, B.C.
August 29, 2023

Place and Date of Judgment:

Abbotsford, B.C.
September 7, 2023

[1] **THE COURT:** This is an application made by the defendant to add a solicitor as a third party.

[2] The defendant was sued on the basis that there was a breach of an oral contract that was subsequently executed through documentation prepared by the solicitor. The defendant says that the solicitor breached his duty by failing to advise the plaintiff to seek independent legal advice and, therefore, is liable to contribute to any damages that might be assessed.

[3] For the reasons that follow, the application to add the third party is dismissed.

BACKGROUND FACTS

[4] The notice of civil claim was filed June 20, 2022, and sets out the facts relevant to the dispute between the plaintiff and defendant arising out of an oral agreement.

[5] In 2016, the parties agreed to purchase 32085 Ashcroft Drive in Abbotsford. They agreed to contribute to the purchase price, to share the eventual sale profits, and to receive rents and pay property expenses.

[6] The costs consisted of the purchase price of \$432,000 and property purchase tax of \$6,640 and legal fees of \$1,501.91 of which the plaintiff contributed \$25,700, and the defendant paid the balance up to a \$345,500 mortgage.

[7] Solicitor Amarjit Dhindsa was retained to prepare the conveyancing documentation, mortgage, and a power of attorney.

[8] The plaintiff alleges that the defendant was aware that she was unfamiliar with real estate transactions and the associated documentation, and used that lack of knowledge to take unfair advantage of her. The plaintiff alleges that neither the defendant nor the solicitor advised her to seek independent legal advice.

[9] The purchase documents "unbeknownst to the plaintiff" registered the property solely in her name. A declaration of trust stated that the plaintiff held the property as a bare trustee for the defendant.

[10] The defendant asked the plaintiff to provide a power of attorney, so that the defendant could also deal with the property. On July 13, 2016, the plaintiff attended to Mr. Dhindsa's office and executed the power of attorney, which did not restrict the defendant dealing with the property.

[11] The plaintiff includes the following allegations with respect to the power of attorney at paras. 15 to 17 of the notice of civil claim:

15. At all material times the Defendant knew or ought to have known that the Plaintiff was unfamiliar with the Power of Attorney and further, used that lack of knowledge to her advantage.
16. The Plaintiff was not provided independent or any legal advice regarding the legal effect of the Power of Attorney nor was it suggested by the Defendant or the Solicitor that the Plaintiff obtain independent legal advice. Further, the Plaintiff did not pay the cost of the Power of Attorney, and the Defendant was present throughout the attendance of the Plaintiff at the office of the Solicitor when she executed the Power of Attorney.
17. The only explanation provided the Plaintiff by the Defendant, or the Solicitor was that the Power of Attorney would allow the Defendant to show the Property to prospective renters.

[12] The defendant kept all of the rental money and provided no accounting.

[13] In December 2016, unbeknownst to the plaintiff, the defendant sold the property for \$512,000. After paying the mortgage and other charges and expenses, the defendant received \$157,586.76. The plaintiff alleges that she learned of the sale in April 2017.

[14] The defendant had deposited \$25,500 to the plaintiff's bank account in March 2017.

[15] The plaintiff paid damages to the new owners in the amount of \$1,507.50 because of the condition the property was in, and an unpaid municipal utilities account.

[16] In February 2022, the plaintiff's 2016 personal tax return was reassessed so that the entire gain on the property was added to her income. The reassessment total of \$40,391.59 increased the plaintiff's liability with respect to a reassessment of a child tax benefit in the amount of \$994.78.

[17] The plaintiff states that she understood that the defendant would report the sale proceeds pursuant to the declaration of trust, and her failure to do so resulted in the tax reassessment.

[18] The causes of action are described in paras. 29 to 32 of the notice of civil claim, which state as follows:

29. At all material times, the Defendant owed a fiduciary duty to the Plaintiff arising from the Declaration of Trust to report and pay all the income taxes consequences arising from the sale of the Property, further to her sole beneficial interest therein arising from the fact that the Plaintiff held her legal interest in the Property as bare trustee for the Defendant.
30. Further, the Agreement was a sham created by negligent and fraudulent misrepresentations of the Defendant, as evidenced by the course of conduct of the Defendant subsequently, which appeared solely to use the good credit of the Plaintiff to make a profit from the Property that the Defendant solely retained for her own use, which was legally supported by the Declaration of Trust executed by the parties [at] the time the Property was purchased.
31. To conclude, the Plaintiff has suffered loss and damages, all as a direct result of the Defendant's negligent or fraudulent misrepresentations to the Plaintiff as to the nature of the transaction and her involvement, which appeared solely to use the good credit of the Plaintiff to make the profit from the Property that the Defendant retained and further, as a direct consequence of the Defendant's breach of the Declaration of Trust herein in failing to report that profit on her personal tax return, as the sole beneficial owner and sole recipient thereof.
32. In all of the circumstances, the Defendant has been unjustly enriched to the corresponding detriment of the Plaintiff, there being no juristic basis for the Defendant to retain that benefit.

[19] The response to the civil claim denies that there was any wrongdoing and asserts that the parties agreed to the manner in which the property was dealt with. The defendant pleads that she did not advise the plaintiff to seek independent legal advice and was unaware if her solicitor, Mr. Dhindsa, gave such advice.

[20] The defendant admits that she was responsible for paying the plaintiff for the tax consequences arising out of the sale and submits that she has done so.

[21] In the proposed third-party notice, the defendant states that she was not aware if Mr. Dhindsa advised the plaintiff to seek independent legal advice. The defendant asserts that the only person with a duty to advise the plaintiff to seek independent legal advice was Mr. Dhindsa.

[22] The third-party claim is summarized at para. 37, as follows:

37. To conclude, the Defendant denies that the Plaintiff has suffered loss and damages as outlined in the Notice of Civil Claim. The Defendant maintains all its position outlined in the Response to Civil Claim. However, in the event that loss or damage has occurred, the loss or damage is a direct consequence of the Third Party's failure to fulfill his duties as a lawyer. The failure of the Third Party to fulfill his legal obligation is contrary to the Representation.

[23] At para. 7 of Part 3 (the legal basis of the third-party claim), the defendant further pleads:

7. The Third Party is obligated to the Defendant pursuant to his relationship as a legal representative for the Defendant. The Third Party has a duty to provide competent legal service in exchange for being paid money (the "Contract"). The Third Party represented himself as a competent lawyer to the Defendant who would fulfill all legal obligations required for a particular procedure (the "Representation"). The Third Party breached the Contract by not fulfilling his duties and obligations as a lawyer in relation to execution of the Purchase Documentation and the Power of Attorney.

[24] This, the defendant says, is the cause of action against the third party.

THIRD PARTY PROCEEDINGS

[25] Section 4 of the *Negligence Act*, R.S.B.C. 1996, c. 333 provides the basis for contribution or indemnity. Rule 3-5 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 sets out the process for making a third-party claim.

[26] If a third-party claim has not been brought been 42 days of the response to civil claim, then leave of the court is required. That is what has occurred here.

[27] The governing principle on this application is whether it is just and convenient to grant the relief. The following factors are applicable in the analysis:

- a) prejudice to the parties;
- b) expiration of the limitation period;
- c) the merits of the proposed claim;
- d) any delay in the proceedings; and
- e) the timeliness of the application.

[*Gordon v. Krieg*, 2011 BCSC 916, at para. 50.]

[28] The applicant for a third-party claim does not need to adduce evidence. Instead, reliance is based upon the pleadings, which are presumed to be true. The application will only be struck if it is plain and obvious that the pleading fails to disclose a claim that is not bound to fail: *0790482 B.C. Ltd. v. KBK No. 11 Ventures Ltd.*, 2022 BCSC 1095, at para. 20.

[29] Counsel agree that the only issue on this application is whether there is merit to the claim.

DISCUSSION

[30] The plaintiff's pleadings do not particularize a claim against Mr. Dhindsa, but they do show that he was a solicitor provided by the defendant. The plaintiff's complaint is that she did not understand the nature of the documents that she was signing in the presence of the solicitor, and that she has suffered damages as a result of negligent or fraudulent misrepresentations as to the transaction. She was not told to seek independent legal advice.

[31] In the response to the civil claim, the defendant referred to Mr. Dhindsa as her solicitor. She acknowledges that she did not tell the plaintiff to seek independent legal advice but was unaware if Mr. Dhindsa did so. The defendant pleads that Mr. Dhindsa advised her to obtain a power of attorney for the property, and she paid the legal fees for that document to be drawn. The defendant was unaware if Mr. Dhindsa told the plaintiff to seek independent legal advice with respect to the power of attorney.

[32] The third-party pleading claims that Mr. Dhindsa represented himself to be a competent lawyer who would fulfill all legal obligations. The defendant pleads that she lacked the legal sophistication and understanding to know that the plaintiff needed independent legal advice and Mr. Dhindsa had a duty to advise the plaintiff accordingly.

[33] The third party argues that there is a lack of particularity in the pleadings, and only a bald assertion is made against Mr. Dhindsa. There is no issue that the precise nature of injury and damage must be specified: *H.M.B. Holdings Limited v. Replay Resorts Inc.*, 2019 BCSC 1138, at para. 57. That is so a party can identify the nature of the claim to be litigated and respond intelligibly rather than trying to guess as to the claim being made.

[34] In assessing the nature of the claim, the entirety of a pleadings must be examined. It would be wrong to parse out bits and pieces. The exercise is not to determine the literary talent of the pleading draftsman, but rather to understand the nature of the claim. The draftsman runs the risk of the claim being dismissed if it is scattered in a fashion that the precise nature of the claim cannot be determined.

[35] Here, I am satisfied that the pleadings disclose the following claims:

- 1) The plaintiff was unfamiliar with real estate transactions.
- 2) The solicitor was retained by the defendant, and the solicitor provided advice to the defendant.
- 3) The plaintiff was presented with purchase documents and a power of attorney, which transferred control of the property to the defendant.
- 4) The defendant or the solicitor told the plaintiff that the power of attorney was to show the property to prospective renters.
- 5) The solicitor did not advise the plaintiff to seek independent legal advice.

- 6) The defendant used the power of attorney to sell the property and retain most of the sale proceeds contrary to what the plaintiff says they agreed to.

[36] The third party argues that there is no causal link between the failure to advise of independent legal advice and the plaintiff's claim. The third party argues that Mr. Dhindsa only owed a duty of care to the plaintiff, and such a pleading is precluded by the rule in *Adams v. Thompson*, (1987), 15 B.C.L.R. (2d) 51 (C.A.). The third party refers to the rule in *Adams* in his argument (at para. 18), as follows:

A third-party action will generally not be available where the duties or obligations upon which it is based belong primarily to the plaintiff. This is referred to as the rule in *Adams*. In such circumstances, the third-party claim is unnecessary; the defendant can raise the alleged failure to discharge that duty as a defence to the plaintiff's claim.

[37] Here, the defendant had retained Mr. Dhindsa previously, and she regarded him as her solicitor. She expected that he would carry out his duties in a competent fashion. The plaintiff alleges that she was unfamiliar with real estate transactions and that Mr. Dhindsa told her that the power of attorney was only for the purposes of showing the property to prospective renters, when in fact there were no restrictions attached to the power of attorney. Without the power of attorney, the defendant would not have been able to sell the property. Thus, the defendant argues that Mr. Dhindsa owed a duty that belonged primarily to her.

[38] The third party further argues that even if there is a duty owed by Mr. Dhindsa to the defendant, the alleged breach of that duty and the plaintiff's loss does not disclose a reasonable cause of action.

[39] The issue between the plaintiff and defendant is with respect to the tax liability that arose as a result of the reassessment in 2022. The other complaints that the plaintiff had would be subject to a limitation defence because she became aware that the property had been sold at least in 2017, and her notice of civil claim was not filed until June 20, 2022.

[40] Even though the solicitor may have failed in his duty to properly explain the documents he prepared or failed to advise the plaintiff to seek independent legal advice, the pleadings do not disclose a causal connection between the breach and the tax liability.

[41] In the absence of pleadings that include the following:

- 1) the plaintiff would have sought independent legal advice had she been advised;
- 2) having been provided independent legal advice, she would not have agreed to the transaction or the power of attorney; and
- 3) she would not have suffered loss or damage had she not agreed to the transaction or the power of attorney.

In the absence of such claims, there is no basis to suggest that the solicitor's breach caused the plaintiff's loss or damage.

[42] I conclude that the rule in *Adams* does not apply in these circumstances because the solicitor's obligations were to the defendant.

[43] However, I am not satisfied that there is a causal connection between the plaintiff's loss or damage and the solicitor's omission. I, therefore, conclude that the proposed third-party action is bound to lose. The third-party proceeding is unnecessary.

[44] The result is that the application must be struck because it is plain and obvious that the pleadings fail to disclose a claim that is not bound to fail.

[45] Any submissions with respect to costs?

(SUBMISSIONS ON COSTS)

[46] THE COURT: All right. Costs to the third party.

“S.D. Dley J.”

DLEY J.