

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Dick v. Streifel*,
2024 BCSC 473

Date: 20240314
Docket: S237492
Registry: Vancouver

Between:

Rodney Daniel Dick and R.D. Backhoe Services Inc.

Plaintiffs

And

Warren Streifel

Defendant

Before: The Honourable Mr. Justice Riley

Oral Reasons for Judgment

The Plaintiff, appearing in person:

R.D. Dick

No other appearances

Place and Date of Hearing:

Vancouver, B.C.
February 22, 2024
March 14, 2024

Place and Date of Judgment:

Vancouver, B.C.
March 14, 2024

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Introduction

[1] This is a ruling on an application by Mr. Dick and his company R.D. Backhoe Services Inc. (“R.D. Backhoe”) for leave to file a civil action. Mr. Dick and his related companies, including R.D. Backhoe, have been designated vexatious litigants and as such they require leave of a justice of this Court to commence any new actions.

Mr. Dick’s Status as a Vexatious Litigant

[2] There have been multiple orders from this Court and from the Court of Appeal declaring Mr. Dick to be a vexatious litigant. Some of those orders were narrow in their scope, barring Mr. Dick from commencing proceedings or filing applications in respect of particular parties or related parties. For example:

(a) On 20 February 2007, Justice Gray declared Mr. Dick to be a vexatious litigant and made an order barring him from commencing proceedings against the defendant in that action, Vancouver City Savings Credit Union, or any related parties, without leave of the court: *Dick v. Vancouver City Savings Credit Union*, 2007 BCSC 1419 at paras. 14–15.

(b) On 16 February 2017, the Court of Appeal declared Mr. Dick and his related companies to be vexatious litigants, and barred them from bringing any appeal proceedings against the named respondents in that proceeding, or any related parties. This order was subject to exceptions allowing Mr. Dick or his companies to pursue appeals without leave in limited circumstances: *R.D. Backhoe Services Inc. v. Graham Construction and Engineering Inc.*, 2017 BCCA 91 at para. 33.

(c) On 6 June 2023, the Court of Appeal declared Mr. Dick and his two related companies to be vexatious litigants, and barred them from commencing or continuing any appeal or application for leave to appeal in the Court of Appeal, against any party, without leave of the court or a justice: *Dick v. Coquitlam (City)*, 2023 BCCA 261 at para. 31 (Chambers, per Griffin J.A.) [*Dick v. Coquitlam*].

[3] The particular order that governs the current situation was made by Justice Jenkins on 22 December 2017, under s. 18 of the *Supreme Court Act*, R.S.B.C. 1996, c. 443. That order declared Mr. Dick, R.D. Backhoe, and one other company associated with Mr. Dick to be vexatious litigants, and barred these parties from commencing any new actions in this Court, against any parties, without leave. Mr. Dick’s application for leave to bring an appeal from that order was subsequently dismissed on 14 November 2023: *611481 B.C Ltd. v. Graham Construction and Engineering (1985) Ltd.*, 2023 BCCA 414 (Chambers, per Saunders J.A.).

[4] In terms of the rationale given by the courts for making multiple vexatious litigant orders against Mr. Dick and his companies, I would refer to Justice Griffin’s remarks in *Dick v. Coquitlam*. After finding Mr. Dick and his companies to have “‘habitually, persistently and without reasonable cause’ commenced vexatious proceedings in the courts of B.C.” (at para. 28), Griffin J.A. described the underlying conduct and its effect on the justice system as follows:

[30] In short, Mr. Dick has proven himself unable to resist abusing the process of the court. He makes very little effort to file sensible and complete documents, initiating applications that then cause others to expend valuable resources trying to make sense of what he is seeking, including resources to review the lengthy and convoluted history of the litigation. This drives up the costs for opposite parties but also wastes very limited public resources devoted to staffing and running the courts, as well as wasting judicial resources. These limited resources end up being spent on his duplicative and frivolous matters, and are then less available to the people who truly need access to justice. These circumstances in my view justify the broad vexatious litigant order envisioned by s. 22.

[5] These comments were made in the context of Mr. Dick’s history of proceedings in the Court of Appeal, but the underlying concerns resonate in this Court as well. It is against that backdrop of past abusive conduct that the Court must assess Mr. Dick’s current application for leave to commence a new action.

The Current Application for Leave to Commence a New Action

[6] The particular action that Mr. Dick seeks leave to commence is a claim for breach of contract or a claim for a debt in relation to unpaid excavation work. The details are set out in the draft notice of civil claim appended to his requisition seeking

leave to commence the action, filed in the Vancouver Registry on 6 November 2023. The application is supported by an affidavit sworn by Mr. Dick on 27 June 2023.

[7] I am not going to comment on the substance of the allegations contained within Mr. Dick's draft notice of civil claim and supporting affidavit, because this is merely a ruling on leave to commence the action, made on an *ex parte* basis, and I would not want anything said here to be taken as a finding or conclusion as to the merit of the proposed action. In very broad strokes, Mr. Dick claims that, through his business R.D. Backhoe, he performed excavation work for the defendant, and he alleges that he was never paid for that work. The relief sought is an order for payment of the outstanding amount.

[8] As far as I can tell from the application record, the action Mr. Dick proposes to commence does not involve any of the adverse parties who were targeted or drawn into Mr. Dick's prior abusive litigation. When I asked Mr. Dick about this at the continuation of the hearing this morning, just prior to giving this ruling, he assured me that the putative defendant in the proposed new action was not someone with whom Mr. Dick or his companies had been engaged in past litigation of any kind. On the face of the record, I have no reason to question this, but I will return to this point at the end of my reasons.

The Procedural History of the Current Application

[9] It is also necessary, because of the somewhat unique manner in which Mr. Dick's current leave application came before me, to discuss the procedural history of the matter. I would summarize that procedural history as follows:

- (a) Mr. Dick's application for leave to commence the current action came in the form of a requisition, filed in the Vancouver Registry on 6 November 2023.
- (b) The requisition included a draft notice of civil claim, along with a supporting affidavit sworn by Mr. Dick in Port Coquitlam on 22 June 2023.

The affidavit bears a court stamp indicating that it was filed in the New Westminster Registry on 27 June 2023.

(b) The materials came to my attention by way of a request for a desk order, while I was sitting in Vancouver, on or about 14 November 2023.

(c) It was not clear to me why the requisition filed in Vancouver on 6 November 2023 was supported by an affidavit filed some five months earlier, in a different registry. I had some concern that the application had previously been considered and refused by another judge. Accordingly, I made enquires with the New Westminster Registry, and was told there was no record of any such requisition or application in that registry.

(d) On or about 24 November 2023, I instructed the Vancouver Registry staff to make arrangements for Mr. Dick's application for leave to commence the action to be scheduled for an oral hearing before me, without notice to the putative defendant.

(e) On or about 5 February 2024, Mr. Dick contacted Supreme Court Scheduling to set a date for an oral hearing. An appearance was scheduled for 22 February 2024 at 9:00 am, for 30 minutes.

(f) At the oral hearing on 22 February 2024, I asked Mr. Dick why his requisition was filed in the Vancouver Registry on 6 November 2023, while the supporting affidavit had been filed in the New Westminster Registry on 27 June 2023. After some back and forth with the Court, Mr. Dick frankly admitted that he had originally submitted his application to commence the action by way of a requisition filed in the New Westminster Registry, and that another Judge had refused to grant him leave. Mr. Dick said he received the completed requisition with the "refused" box ticked, and no further information.

(g) When I asked Mr. Dick whether he still had the document given to him by the New Westminster Registry, he responded that he lost it, or he could not find it, or he could not say where it was because he had so many papers.

(h) I asked Mr. Dick the name of the Judge who had refused to grant him leave and Mr. Dick gave the name of a Justice who regularly sits in New Westminster.

(i) I stood the matter down, and later in the day adjourned it to today's date, 14 March 2024, at 9:00 am, to give judgment. I gave Mr. Dick leave to attend today's appearance by MS Teams.

(j) While the matter was stood down, and after court on 22 February 2024, I made further enquiries with the New Westminster Registry and with the Judge who, according to Mr. Dick, had refused his leave application. These inquiries were not fruitful, in the sense that I was unable to locate any court record of Mr. Dick's requisition filed in the New Westminster Registry on or about 27 June 2024, and I was also unable to locate any record of the refusal of Mr. Dick's application for leave to commence this action.

[10] To summarize all of this, Mr. Dick freely admitted that he previously filed an application for leave to commence the current court action by way of a requisition submitted to the New Westminster Registry, and that leave was refused by another Judge of this Court. However, despite a diligent search for any records relating to this matter, it appears that the Court Registry has no such record, of either the prior requisition filed by Mr. Dick, or the Court's refusal to grant Mr. Dick leave to commence the action. I will address the implications of all of this later in these reasons.

Analysis

[11] In *Gichuru v. Purewal*, 2023 BCCA 345, at para. 46, Justice Groberman explained that in deciding whether to grant leave to commence proceedings in the face of a vexatious litigant order, the court "is entitled to consider the totality of the

circumstances”, being mindful that the order is not intended to punish the litigant, but rather to “prevent misuse of the justice system”. On the one hand, the judge should take into account, “the very real possibility that the vexatious litigant, true to past form, is seeking to press proceedings that will waste court resources and serve to harass litigants”. On the other hand, the judge must also consider the possibility that the contemplated litigation is legitimate and not abusive, such that refusing leave could result in serious injustice.

[12] With these objectives and broader concerns in mind, as set out at para. 49 of *Gichuru*, the court must be satisfied that the proposed proceeding is “not doomed to fail”, “brought for an improper purpose”, or “a clear abuse of process”. If the litigant overcomes that minimal threshold, the court must go on to consider whether to exercise its discretion to grant leave and thereby allow the proceeding, considering the “totality of the circumstances”. In some cases, it may be apparent that refusing leave could result in “serious injustice” to the litigant. In other cases, the court may conclude that the proposed proceeding is “weak, of no real importance, and uneconomical to litigate”. Many cases will fall somewhere in between these two extremes, and the court will be called upon to exercise its good judgment in deciding whether to grant leave.

[13] Applying those principles in the case at bar, the first question to be determined is whether the proposed action is “doomed to fail”, “brought for an improper purpose”, or “a clear abuse of process”. I cannot conclude that Mr. Dick’s proposed claim is doomed to fail. I will not say more about the merits of the claim, other than to say that it passes this very low threshold.

[14] On the basis of the material presented by Mr. Dick, I cannot conclude that the proposed action is being “brought for an improper purpose”, although I cannot be certain of that, because this necessarily involves taking Mr. Dick at his word that he has no history of prior litigation against or involving the putative defendant. I will make special provision for this concern later in the reasons and the resulting order.

[15] As to whether the proposed action is a “clear abuse of process”, I have two observations to make. First, based on the supporting materials accompanying Mr. Dick’s requisition, I have no reason to believe that the proposed action is abusive to the putative defendant. In reaching this conclusion I must once again accept and place some reliance on Mr. Dick’s assertion that he has no prior litigation history with the putative defendant in this matter. Again, I would make special provision for this in the relief that I am granting. The second point with regard to abuse of process is my concern that Mr. Dick admittedly filed the current requisition in Vancouver a matter of five months after a similar requisition had been filed and rejected by another judge in New Westminster. It is even more disconcerting that Mr. Dick made no mention of any of this in the second requisition. It appears that Mr. Dick simply filed a second requisition in a different registry hoping to get a different result from another judge. This conduct is close to the line in terms of being an abuse of the court’s process. On the other hand, Mr. Dick did admit what had occurred when asked directly about it during the oral hearing on 22 February 2024. Further, since there is no formal court record of the prior refusal, I find it difficult to rely on the past history as the sole basis for refusing Mr. Dick’s application for leave to commence this new action.

[16] While the case is close to the line, I conclude that Mr. Dick has passed the minimal merits threshold contemplated in the two-part test set out in *Gichuru*. What remains to be considered is whether the court should exercise its discretion to grant leave, upon a consideration of the totality of the circumstances.

[17] The totality of the circumstances in this case includes Mr. Dick’s prior history of commencing and pursuing unmeritorious claims, filing nonsensical and incomplete documents, and persisting in claims by seeking to re-litigate them after they have been disposed of or dismissed. That prior history certainly causes the court to view Mr. Dick’s application with a fair degree of trepidation and healthy skepticism as to Mr. Dick’s motives and the potential mischief that granting Mr. Dick leave to commence this action could produce.

[18] On the other hand, the totality of the circumstances also includes the fact that on its face this particular claim appears to relate to work done by Mr. Dick and for which Mr. Dick and his company were allegedly not paid. Again, I will not say more about the merit of the claim other than to observe that it is at least rational and involves a subject matter that could conceivably give rise to legitimate litigation. The relief sought is coherent. The legal basis section of Mr. Dick's draft notice of civil claim is not entirely clear, but that could be addressed by way of amended pleadings, or particulars, spurred on if need be by a motion brought by the opposing party. In these circumstances, it does seem on the application record placed before me that there is some risk that a refusal to grant Mr. Dick leave could result in an injustice, by barring Mr. Dick from pursuing a potentially viable claim.

[19] The final consideration in the court's exercise of jurisdiction has to do with the procedural history of this particular matter and the fact that Mr. Dick has, on his own admission, previously submitted a requisition seeking leave to commence the very same action, which was refused by another judge of this Court.

[20] To state the obvious, the decision of another justice of this Court refusing to grant Mr. Dick leave to commence this action would normally be the end of the matter. The Court would be bound to dismiss any subsequent application dealing with the same proposed action, either on the basis of estoppel, or on the basis that the second application was an abuse of the Court's process. The normal course for an aggrieved litigant in these circumstances would be to appeal the refusal to grant leave to the Court of Appeal. In Mr. Dick's case, he would also have to obtain leave of a justice of the Court of Appeal to commence the appeal. Mr. Dick did not take that course. Instead, by his own admission, he simply filed another requisition, in another registry, seeking the same relief that another Justice had already refused to grant. This is concerning conduct, especially considering Mr. Dick's prior history.

[21] However, I also take into account that when asked about this at the oral hearing, Mr. Dick honestly admitted what occurred.

[22] Furthermore, in the absence of a court record, it is not clear how Mr. Dick could meaningfully have appealed (or sought leave to commence an appeal) from any prior refusal of his request for leave to commence this action. Where the court has no record of the prior dismissal, such that the litigant has little or no opportunity to seek meaningful review, I question whether it would be appropriate to dismiss this leave application without any consideration of the merits. On consideration of the merits, I am not satisfied that the proposed claim is abusive or vexatious, for the reasons explained above.

Conclusion

[23] I hereby grant Mr. Dick’s application for leave to commence this action as set out in the draft notice of civil claim appended to Mr. Dick’s requisition, subject to two conditions outlined in the following paragraph. The draft notice of civil claim should be accepted for filing and deemed filed on the date that Mr. Dick filed his requisition in the Vancouver Registry, that is, 6 November 2023.

[24] The two conditions that I would impose as terms of the order granting leave are as follows. First, Mr. Dick is hereby ordered to personally serve a copy of the order granting him leave to commence the action on the defendant, at the same time that personal service of the notice of civil claim is effected on the defendant. Second, the defendant has leave to apply to the Court to set aside this Order granting leave to commence this application, on five business days notice to Mr. Dick. The purpose of these two terms is to give the defendant the opportunity to bring to the Court’s attention to any prior history of litigation between Mr. Dick and the defendant, which Mr. Dick might not have disclosed to the Court in the materials filed in support of this application.

[25] Because I do not wish there to be any uncertainty or ambiguity about the terms on which I am granting this application, I would direct the Registry to draft the Order, and I would dispense with the requirement for Mr. Dick to endorse the Order,

on the condition that the registry is to provide Mr. Dick with a copy of the order, via email.

“Riley J.”