IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Gill v. Gill,*
2024 BCSC 522

Date: 20240328
Docket: S224637
Registry: Vancouver

Between:

Jassie Gill

Plaintiff

And

Baljinder Gill

Defendant

Before: The Honourable Mr. Justice Doyle

Oral Reasons for Judgment

Counsel for the Plaintiff:	M.P. Bertoldi
Counsel for the Defendant:	D.J. Barker K. Iacono
Place and Dates of Hearing:	Vancouver, B.C. July 14, 2023, March 26, 2024
Place and Date of Judgment:	Vancouver, B.C. March 28, 2024

[1] This matter is an application for a summary trial. The plaintiff seeks judgment for $618,997.91 plus interest and costs. The defendant opposes the relief sought on the basis that the claim is statute barred.

[2] The plaintiff's claim arises from an order of Mr. Justice N. Smith on April 2, 2012, Vancouver Registry No. H091300 (the "2012 Judgment").

[3] The notice of civil claim in this matter was filed June 8, 2022—slightly more than ten years and two months after the 2012 Judgment.

[4] The plaintiff alleges that the 2012 Judgment was paid in part on two occasions prior to the expiry of 10 years post judgment:

a) $100,000 in June 2017 ("$100,000 Payment").

b) A further $3,000 paid by way of six $500 instalments ("$500 Instalments").

[5] The $500 Instalments were consequent upon the plaintiff initiating a subpoena to debtor process, which resulted in a September 17, 2021 order of Master Schwartz (the "2021 Order") that the defendant pay those instalments on the first day of each month, commencing October 1, 2021, until the amount owing pursuant to the 2012 Judgment was paid in full or further order of the Court.

[6] Though conceding that this action was commenced more than 10 years after the 2012 Judgment, the plaintiff alleges that the defendant acknowledged her liability for the amount claimed by virtue of the $100,000 Payment and the six $500 Instalments. Accordingly, the plaintiff submits that the limitation period did not start to run until the defendant paid the last of the $500 Instalments on March 1, 2021.

[7] The defendant submits to the contrary. The defendant filed her own affidavit, and one by her father. Those affidavits reject the allegation that $100,000 was paid in June 2017 toward the 2012 Judgment.

[8] Further, the defendant's evidence is that she paid the plaintiff $25,475.05 in "full and final settlement" of the 2012 Judgment. The plaintiff's affidavit appends a

trust cheque in that amount dated March 31, 2016 payable to his counsel at the time (the "2016 Payment").

[9] In summary, the defendant responds to the plaintiff's claim on the bases that:

a) No $100,000 Payment was made in relation to the 2012 Judgment.

b) The 2016 Payment was a full and final settlement of the 2012 Judgment.

c) This action was not commenced within 10 years of the 2012 Judgment, and is statute barred.

[10] The plaintiff's notice of application contends that the 2016 Payment was settlement of a separate foreclosure matter (para. 9), though he does deduct it from the amount the defendant allegedly owes him in this matter (para. 12). In any event, the plaintiff rejects the defendant's contention that this payment was a "full and final settlement" of the 2012 Judgment.

[11] This summary trial application came before me in Chambers on July 14, 2023. At that time, both parties submitted that the matter was appropriate for disposition by summary trial.

[12] The preliminary issue is whether this matter is suitable for disposition by summary trial. I must consider the principles recently summarized in *Cepuran v. Carlton*, 2022 BCCA 76, which at para. 149 refers to the scope of the summary trial rule as set out by a five-member panel of that Court in *Inspiration Mgmt. Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 BCLR (2d) 202.

[13] The parties' respective affidavits regarding the alleged $100,000 Payment are in stark conflict. The defendant's evidence that the 2016 Payment was a "full and final settlement" of the 2012 Judgment conflicts with the plaintiff's rejection of that assertion.

[14] Regardless of the conflicts in relation to the $100,000 Payment and the 2016 Payment, the parties agree that the defendant paid six $500 Instalments up to and including March 1, 2022.

[15] However, the parties disagree on the effect of those $500 Instalments.

[16] As noted above, the plaintiff says the effect is that the limitation period started to run no earlier than March 1, 2022, after which the defendant stopped paying the $500 Instalments.

[17] To the contrary, the defendant submits that the $500 Instalments she paid were not an acknowledgement of liability. Accordingly, she says that this action, not filed until June 28, 2022, was statute barred as of April 2, 2022 (the tenth anniversary of the 2012 Judgment).

[18] By memorandum to counsel dated January 9, 2024, I requested further submissions from the parties regarding the suitability of the matter for disposition by summary trial in light of this Court's decisions in: *Bank of Montreal v. Monsell*, 1984 CanLII 332; *McKay v. McKay*, 1992 CarswellBC 1296; and *Armstrong Spallumcheen Savings & Credit Union v. McKinlay*, 1992 CarswellBC 1824.

[19] Those further oral submissions proceeded on March 26, 2024. Counsel kindly provided written submissions in advance.

[20] As noted above, the three affidavits provide conflicting evidence regarding the 2016 Payment and the $100,000 Payment.

[21] Those conflicts cannot be resolved on the affidavit evidence before me. Cross-examination on the affidavits pursuant to Rule 22-1(4) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009, is one option. However, the amount in issue is substantial. Credibility issues are at the forefront. The matter is not complex. I foresee little, if any, saving of time or expense, nor significantly enhanced efficiency, if the matter proceeds as something other than a conventional trial. Indeed, direct and cross-examination may allow both parties to clarify their evidence, with salutary

effects. The history of the matter does not suggest urgency or prejudice if the matter proceeds as a conventional trial.

[22] Regarding the recent supplemental submissions of counsel respecting the cases noted above, it appears that once a judgment creditor has embarked on the subpoena to debtor process and received an order such as the 2021 Order, the judgment creditor is bound by that order unless the judgment creditor applies to the court for one or more of various remedies available under Rule 13-3: see *Monsell* at para. 7; *McKay* at paras. 4–8; *Armstrong* at paras. 23–28.

[23] At this stage, the plaintiff has not sought any of those remedies as the judgment creditor in relation to the 2021 Order. I will not speculate about the potential results of any such application.

[24] Based upon the provisions and principles related to Rule 9-7, and bearing in mind the matters discussed above with regard to the conflicts in the evidence, my view is that a conventional trial is needed. The resolution of those conflicts is required for determination of the *Limitation Act* issue. The $500 Instalments are interwoven with that same issue. Moreover, if the claim is not statute barred, resolution of the conflict in evidence about whether or not the 2016 Payment was in "full and final settlement" of the 2012 Judgment is also required.

[25] I find that the issues raised by the summary trial application are not suitable for disposition by summary trial, nor will a summary trial assist the efficient resolution of this proceeding. Accordingly, I dismiss the summary trial application.

[26] With regard to the 2021 Order arising from the subpoena to debtor process, I note para. 8 of Master Horn's decision in *McKay*:

> The effect of the decision in *Bank of Montreal v. Monsell* is that a judgment creditor who obtains, under the subpoena to debtor process, the extraordinary remedy of committal does so in exchange for all other remedies and must abandon that remedy by setting aside the order of the examiner before he can turn to others. It is of significance that a subpoena to debtor cannot be issued where there is a writ of execution outstanding (see Rule 42(23)) and this lends weight to the conclusion that the extraordinary

> remedies provided by the subpoena to debtor procedure are in lieu of all others.

[27] In the circumstances, I will order that no further steps be taken by either party in this proceeding without leave of the court.

[28] Both parties sought the disposition of this matter by summary trial. Costs will be in the cause.

"Doyle J."