IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Trigon Pacific Terminals Limited v. Prince Rupert Port Authority*, 2024 BCSC 1298

Date: 20240625
Docket: S237527
Registry: Vancouver

Between:

Trigon Pacific Terminals Limited

Plaintiff

And

Prince Rupert Port Authority

Defendant

Before: The Honourable Mr. Justice Brundrett

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:	R.J.C. Deane D. Rossi B. Stang
Counsel for the Defendant:	D. Misutka
Counsel for the Applicant, Ridley Island Energy Export Facility Limited Partnership:	M.A. Youden Q. Rochon
Place and Date of Trial/Hearing:	Vancouver, B.C. June 25, 2024
Place and Date of Judgment:	Vancouver, B.C. June 25, 2024

[1] **THE COURT:** The applicant, Ridley Island Energy Export Facility Limited Partnership, by its general partner, Ridley Island Energy Export Facility GP Inc. (collectively, "REEF LP"), appeals from the decision of Associate Judge Bilawich dismissing its application to be added to the underlying action as a defendant and to amend the style of cause accordingly: see *Trigon Pacific Terminals Limited v. Prince Rupert Port Authority*, 2024 BCSC 539.

[2] The underlying action involves a dispute between Trigon Pacific Terminals Limited ("Trigon") as lessee and Prince Rupert Port Authority (“PRPA”) as landlord under a lease signed in 1981 (the “Lease Agreement”). Trigon and REEF LP are neighbours and competitors on the lands and waters of the Port of Prince Rupert, where both operate shipping facilities on Ridley Island. The defendant, PRPA, is the port regulator and the landlord of both Trigon and REEF LP.

[3] On August 1, 2015, PRPA entered into a project development agreement with Vopak Development Canada Inc. (“Vopak”) regarding the proposed development of a marine terminal project within the port known as the Ridley Island Export Facility (the “Vopak Agreement”). The Vopak Agreement granted Vopak exclusive rights to construct, own, and operate facilities to deliver, unload, store, process, transport, load and export liquified petroleum gas (or "LPGs"). The applicant, REEF LP, is a successor under the Vopak Agreement and currently holds the exclusivity rights respecting LPGs.

[4] Under the Lease Agreement, Trigon may only use the leased premises for the purposes set out in the Lease Agreement unless it obtains PRPA's written consent to an alternative use, which consent PRPA must not unreasonably withhold. On September 29, 2023, Trigon requested PRPA's permission to expand the permitted uses under the Lease Agreement to include the bulk handling and shipment of LPGs. The PRPA refused the request on November 6, 2023, stating that this would conflict with PRPA's other commercial commitments—namely, those owed to REEF LP under the Vopak Agreement.

[5] On November 27, 2023, Trigon commenced its action against PRPA. In its claim, Trigon seeks relief against PRPA, including various declarations pertaining to the Lease Agreement, specific performance or damages, and an injunction. REEF LP is concerned that if Trigon were to be granted specific performance or injunctive relief, this would trespass on REEF LP's exclusivity rights over the handling and shipment of LPGs.

[6] The Associate Judge decided the application pursuant to Rule 6-2(7)(b) and (c) of the *Supreme Court Civil Rules*, which provide as follows:

> (7) At any stage of a proceeding, the court, on application by any person, may, subject to subrules (9) and (10),
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> …
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> (b) order that a person be added or substituted as a party if
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> (i) that person ought to have been joined as a party, or
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> (ii) that person's participation in the proceeding is necessary to ensure that all matters in the proceeding may be effectually adjudicated on, and
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> (c) order that a person be added as a party if there may exist, between the person and any party to the proceeding, a question or issue relating to or connected with
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> (i) any relief claimed in the proceeding, or
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> (ii) the subject matter of the proceeding
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> that, in the opinion of the court, it would be just and convenient to determine as between the person and that party.

[7] On appeal, REEF LP submits that the Associate Judge committed a legal error in requiring it to demonstrate that a cause of action exists between REEF LP and an existing party. REEF LP claims that this in turn coloured the Associate Judge's analysis of whether it would be "just and convenient" to add REEF LP as a party. It submits that the appeal should be allowed and REEF LP should be added as a defendant. PRPA, which is a supporting respondent on the appeal, supports REEF LP's position.

[8] I note that the respondent Trigon has filed an application to adduce fresh evidence in the form of an affidavit reporting some statements of corporate officers that are alleged to undermine REEF LP's stated direct interest in the underlying litigation. However, I do not find it necessary to resort to this evidence.

[9] There was some discussion as to whether the Associate Judge's decision was reviewable on the clearly wrong standard or on a *de novo* standard; see, for instance, *Ningbo Zhelun Overseas Immigration Service Co. Ltd. v USA-Canada International Investment Inc.,* 2024 BCSC 682 at paras. 54 and 62-65; *I4PG Hastings Street Inc. v. Burnaby Dry Cleaners Ltd*., 2023 BCSC 242 at paras. 53–54. However, it is unnecessary to resolve this issue because, for the reasons set out below, I find that the appeal is not made out on either standard.

[10] My reasons will be brief because, having reviewed the Associate Judge's decision, I do not agree that he committed the error in question, and in fact I substantially agree with his reasons.

[11] At the outset of his analysis, the Associate Judge quoted Rule 6-2(7) and the considerations in *Meade v. Armstrong*, 2011 BCSC 1591 at para. 16.

[12] The Associate Judge first considered whether the applicant should be added under the narrower branch of the Rule in 6-2(7)(b), dealing typically with a defect in the proceeding. He began his analysis by quoting *Madadi v. Nichols*, 2021 BCCA 10 at para. 21 and, after reciting the arguments of the parties, concluded as follows:

> [20] Rule 6-2(7)(b) is interpreted more narrowly than subrule (c). This action involves a lease dispute between a lessee and lessor regarding interpretation of a particular clause in the Trigon Lease. That lease was formed in or around 1981, long before the Vopak Agreement Exclusivity Rights or REEF LP were created. REEF LP is not a party to the Trigon Lease and has no apparent standing to participate in the dispute as it is currently framed in the pleadings.
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> [21] REEF LP did not put forward a proposed response to civil claim which identifies what, if any, issues it proposes to engage with or the factual or legal issues it suggests require its participation. During argument, counsel did suggest that its application be adjourned to allow it to identify specific paragraphs in the existing pleadings which it proposes to respond to or address in a proposed response to civil claim. The need for such to support an application of this kind and to help identify a cause of action that it may have with an existing party to the action ought to have been obvious. There are no pleadings to consider and the affidavit evidence tendered does not provide any basis for granting the relief sought under the subsection.
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> [22] I am not persuaded that REEF LP ought to have been joined as a party to the action or that its participation is necessary to ensure all matters

> may be effectually adjudicated upon. The application under this subrule is dismissed.

[13] While the Associate Judge referenced the lack of a cause of action between REEF LP and either Trigon or PRPA at para. 18, and indeed elsewhere in his reasons, it appears to me that he correctly considered the language of Rule 6-2(7)(b) and the authorities applicable thereto in reaching his conclusion. While the lack of a possible cause of action was one factor he considered, his conclusion was ultimately based on whether REEF LP ought to have been joined as a party or whether its participation was necessary to ensure that all matters in the proceeding may be effectively adjudicated.

[14] I do not agree that the Associate Judge fell into error by overemphasizing the issue of whether there was a possible cause of action between the proposed new party and an existing party, or by relying on *Robson Bulldozing v. RBC*, [1985] B.C.J. No. 2775 at para. 8 in that regard. Indeed, a possible cause of action would have offered useful support for finding that REEF LP had a "direct interest in the outcome of the existing action" or that its participation was necessary to "fully and properly adjudicate" the claim, which the Associate Judge was otherwise unable to find on the affidavit evidence and pleaded facts before him: see *Byrd v. Caribou (Regional District),* 2016 BCCA 69 at para. 36.

[15] The Associate Judge's reasons mention that REEF LP's failure to submit a proposed response to civil claim complicated the assessment of the application. However, he states that he was also unable to find any basis for adding the applicant in the affidavit evidence, illustrating that he did not see filing a proposed pleading as being a requirement. His ultimate reasons refer more generally to the lack of any basis for granting the relief sought (at para. 21) and to the lack of necessity that REEF LP be joined or participate in the underlying action (at para. 22). I find no reviewable error in these findings; on the pleaded facts and evidence, I agree that REEF LP does not have a *direct* interest in the parties' dispute, as the effect that its resolution may have on the rights of third parties in an unrelated contract is extraneous to the issues in dispute.

[16] The Associate Judge also considered whether the applicant should be added under the broader rule in Rule 6-2(7)(c). On this branch, he again quoted the correct approach from the *Madadi* decision, this time at paras. 22–24. He discussed the application of various authorities, including *Kitimat (District) v. Alcan Inc.,* 2006 BCCA 562, to the "just and convenient" aspect of the test. He properly noted that *Kitimat* arose in the context of judicial review "where, by definition, there is no cause of action between any of the parties": *Kitimat* at para. 34. He correctly concluded that the existence of a cause of action was one relevant consideration.

[17] The test for adding a party under Rule 6-2(7)(c) is whether a question or issue exists between the plaintiff and the proposed defendant that relates to or is connected with the relief, remedy, or subject matter of the proceeding. On this branch of the rule, the Associate Judge concluded as follows:

> [27] Rule 6-2(7)(c) is interpreted more broadly than subrule (b). It firstly obliges REEF LP to identify a question or issue relating to or connected with any of the relief claimed in this action or the subject matter of this action. In this case, its efforts to identify such a question or issue is hampered by its failure to tender a proposed pleading which sets out a viable claim, issue or cause of action it has with either of the existing parties. It does not assert that Trigon or PRPA have breached any particular legal or equitable obligation owed to it. It simply asserts in general terms that its exclusivity rights would be adversely affected if certain relief Trigon is seeking were to be granted. In my view, the lack of a proper pleading or sufficient affidavit evidence establishing an arguable cause of action in relation to either of the existing parties is problematic on this application.
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> [28] A further requirement is that REEF LP establish that it would be just and convenient to determine the question or issue it seeks to address with either or both of the existing parties. Again, its failure to put forward a properly pled question or issue means that its proposed role, if it were to be added as a party to this proceeding, is vague and ill-defined. I am concerned that the uncertainty would lead to otherwise unnecessary proceedings and expense for the parties to try and navigate these uncertainties.
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> [29] It appears that REEF LP's goal with this application is to inject itself into, monitor and selectively intervene in a private contractual dispute between a lessee/potential competitor and its lessor. It has no standing to litigate the Trigon Lease directly. It has not identified any alleged breach of contractual, statutory or equitable duty that either of the existing parties owe to REEF LP. Its proposed role appears more closely associated with what one might expect of an intervenor.
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> [30] If REEF LP believes that Trigon is seeking to interfere with its contractual or economic relations with PRPA or that PRPA has breached

> some obligation owed to it under the Vopak Agreement, or some other agreement, then it should consider commencing a separate action against one or both of them. That would ensure that proper causes of action and relief sought are appropriately identified. It can then consider whether it would be appropriate to apply to have both actions tried together.
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> [31] I am not persuaded that REEF LP has identified a question or issue related to or connected with any relief claimed in this action or the subject matter of this action. I am also not persuaded that it would be just and convenient to determine whatever question or issue REEF LP seeks to address with either or both of the existing parties.
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> [Emphasis added.]

[18] I am not persuaded that these reasons reveal a reviewable error. In particular, it does not appear to me that the Associate Judge required a pleading or a cause of action as a precondition. When I read the reasons as a whole, the Associate Judge appears to appropriately balance the various factors impacting the exercise of his discretion.

[19] Counsel have taken me to various authorities including: *Savage v. Savage Estate*, 2024 BCSC 678; *Stewart v. Stewart*, 2016 BCSC 1576; *City of Courtenay v. Lin*, 2014 BCSC 391; *Canadian Independent Medical Clinics Association v. British Columbia (Medical Services Commission),* 2010 BCSC 927; and *British Columbia Teachers' Federation v. British Columbia (Attorney General),* 2008 BCSC 1599.

[20] Some of these cases arose in a different context, such as *Stewart*, which was a trusts case, and *Savage*, which was an estate case. Counsel are quite correct that Rule 6-2(7) may be applied differently in different contexts. For instance, it is clear that estate or trusts litigation will directly affect the interests of third-party beneficiaries. In the context of a contractual claim, it was a reasonable exercise of discretion, and not a reviewable error, to find that REEF LP failed to identify a question or issue between itself and a party that relates to the proceeding.

[21] REEF LP is neither a party to the contract at issue nor a third-party beneficiary under it; rather, REEF LP claims that the resolution of the parties' contractual dispute may have a "knock-on effect" on its rights under an unrelated

contract. In these circumstances, it was reasonable for the Associate Judge to decide that it would not be just and convenient to add REEF LP to the proceeding.

[22] The Associate Judge was troubled by the failure of REEF LP to particularize how it is connected to the underlying action or the relief sought therein and to articulate how its exclusivity rights would be adversely affected if certain relief Trigon was seeking was to be granted. He was also clearly concerned with injecting uncertainty and expense into the proceedings; see para. 28. These are reasonable considerations: see, for instance, *Rastad v. Cienciala*, [1956] 19 W.W.R. 623 per Ruttan J.

[23] As the Associate Judge noted in para. 30, if REEF LP believed that Trigon was seeking to interfere with its contractual or economic relations with PRPA, or that PRPA had breached a term in the Vopak Agreement, then it could consider commencing a separate action against one or both of them.

[24] I cannot find an error in the Associate Judge's just and convenience analysis on the second branch of the Rule in 6-2(7)(c).

[25] I have not found that the Associate Judge made any errors of law, nor have I found any basis on which to interfere with his exercise of discretion in balancing the factors at play under Rule 6-2(7).

[26] Despite the able submissions of Mr. Youden, supported by Mr. Misutka, I would dismiss the appeal with costs payable to Trigon.

"Brundrett J."