

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *NRI Solutions Ltd. v. Chohan*,
2024 BCCA 146

Date: 20240412
Docket: CA49330

Between:

NRI Solutions Ltd.

Appellant
(Third Party)

And

Kamalpreet Singh Chohan and Davinder Kaur Chohan

Respondents
(Defendants)

And

**Simarpreet Walia, Inderjit Singh Walia, Kusum Deep Kaur Walia
and Nirapjit Kaur**

Respondents
(Plaintiffs)

Before: The Honourable Madam Justice Stromberg-Stein
The Honourable Justice Skolrood
The Honourable Justice Winteringham

On appeal from: An order of the Supreme Court of British Columbia, dated
August 22, 2023 (*Walia v. Chohan*, New Westminster Docket S243209).

Oral Reasons for Judgment

Counsel for the Appellant:

M. Magaril
C. Ma

Counsel for the Respondents, Kamalpreet
Singh Chohan and Davinder Kaur Chohan:

G. Cheema
G.K. Randhawa

Place and Date of Hearing:

Vancouver, British Columbia
April 12, 2024

Place and Date of Judgment:

Vancouver, British Columbia
April 12, 2024

Summary:

The appellant appeals an order granting the Chohan Respondents leave to file a third party notice advancing a claim against the appellant for intentional interference with economic relations.

Held: Appeal allowed. The third party notice fails to plead the requisite elements of the tort of intentional interference with economic relations. Specifically, it fails to plead an unlawful act committed against a third party. The third party notice also fails to plead material facts supporting the claim.

SKOLROOD J.A.:**Introduction**

[1] This is an appeal from an order granting the defendants in the underlying action leave to file a third party notice against the appellant, NRI Solutions Ltd. (“NRI”).

Background

[2] The respondents, Kamalpreet Singh Chohan and Davinder Kaur Chohan (the “Chohan Respondents”), are the registered owners of a detached home located in Surrey, British Columbia (the “Property”).

[3] On May 12, 2021, in separate proceedings (the “NRI Action”), NRI sued Mr. Chohan and filed a certificate of pending litigation (CPL) against the Property. In the NRI Action, NRI alleges that Mr. Chohan embezzled or converted property from NRI, and then used those funds to purchase the Property (RFJ at para. 8).

[4] On October 5, 2021, the respondents, Simarpreet Walia, Inderjit Singh Walia, Kusum Deep Kaur Walia, and Nirapjit Kaur (the “Walia Respondents”) entered into an agreement to purchase the Property from the Chohan Respondents for approximately \$2.5 million (the “Contract”). The Contract provided for a completion date of February 22, 2022. Pursuant to the Contract, the Chohan Respondents agreed to deliver the Property to the Walia Respondents free of any encumbrances.

[5] At all material times, the Chohan and Walia respondents were aware of the CPL registered against the Property (RFJ at para. 1).

[6] On January 18, 2022, Justice Marzari issued an order in the NRI Action cancelling NRI's CPL due to what the judge here described as technical deficiencies (RFJ at para. 3). Specifically, Justice Marzari found that NRI's notice of civil claim (NOCC) failed to plead material facts sufficient to maintain a claim to an interest in the Property and further failed to plead that damages would not be an adequate remedy, both of which are requisite elements to the filing of a CPL.

[7] On February 8, 2022, NRI filed a new CPL against the Property after amending its NOCC in the NRI Action to cure the deficiencies.

[8] On February 17, 2022, Mr. Chohan applied for an order that the second CPL be cancelled. In the alternative, Mr. Chohan sought an order requiring NRI to post security for damages arising from the CPL (RFJ at para. 6). According to the judge here, Justice Marzari, who heard the second application as well, concluded that the second CPL was "not inappropriate" on the evidence before her (RFJ at para. 5). However, Justice Marzari granted Mr. Chohan's alternative relief and ordered that NRI provide a written undertaking respecting damages which could result from the second CPL, along with a deposit of \$135,000 (the "Marzari Order")

[9] On February 18, 2022, in accordance with the Marzari Order, NRI posted security and provided Mr. Chohan with their undertaking respecting damages.

[10] Of note, in the NRI Action, Mr. Chohan filed a counterclaim in which he claims damages resulting for the wrongful filing of the CPL.

[11] As a result of the registered CPL, the Chohan Respondents were unable to deliver the Property to the Walia Respondents free from encumbrances by the completion date.

[12] On March 3, 2022, the Walia Respondents commenced the underlying action against the Chohan Respondents for breach of contract, seeking specific performance or, alternatively, damages.

[13] On August 22, 2023, the Chohan Respondents applied for leave to file a third party notice against NRI, alleging that NRI registered the second CPL with the intention of preventing the sale of the Property, thus committing the tort of intentional interference with economic relations.

The Judge’s Reasons

[14] In his reasons at para. 12, the judge cited *Low v. Pfizer Canada Inc.*, 2015 BCCA 506 at para. 77 where this Court held that there are three elements to the tort of intentional infliction of economic harm:

1. an unlawful act committed against a third party;
2. intended to cause economic harm to the plaintiff; and,
3. resulting in economic harm to the plaintiff.

[15] The key issue before the judge was whether the NRI’s registration of the second CPL could be characterized as an “unlawful act”. The judge acknowledged that it was “difficult to envision” that it could, given the Court had refused to cancel the CPL on Mr. Chohan’s second application (para. 11).

[16] However, the judge found that determining this issue required the Court to weigh evidence, which had not yet been produced. The judge concluded that the pleading would stand, with supporting evidence disclosed through the discovery process and cross-examination at trial (para. 14).

[17] Accordingly, the judge granted the Chohan Respondents leave to file the third party notice against the appellant.

The Third Party Notice

[18] It is useful at this point to review the TPN that was filed on August 22, 2023.

[19] The TPN recites the background facts largely as I have outlined them. The TPN then alleges:

10. NRI failed to provide the [Chohans] with an executed copy of the Court order removing the First CPL until such time that NRI filed the Second CPL. The failure to provide a signed copy of the February 4, 2022 Court order was done intentionally by NRI for the purpose of preventing the following:
 - a. the [Chohans] from selling the Property and receiving sale proceeds with respect to the same; and
 - b. the [Walias] from receiving title of the Property free and clear of any encumbrances.
13. The sole reasons of the [Chohans] inability to complete the contract is the registration of the Second CPL by NRI.
14. NRI intended to interfere with the [Chohans'] economic interests by preventing the sale of the property.
15. NRI registered the Second CPL knowing that it was going to frustrate the Contract and after the Court ordered the removal of the First CPL to facilitate the sale of the Property.
16. NRI improperly filed the Second CPL before the First CPL had been discharged from title to the Property.
17. The [Chohans] suffered economic harm as a result of the Second CPL and this action arises only because of the registration of the same.

[20] The TPN then sets out the following relief sought by the Chohans:

- a) A declaration that the [Chohans] are entitled to contribution and indemnity against the claims of the Plaintiffs [Walias], from NRI for any liability that the [Chohans] may be under to the Plaintiffs;
- b) A declaration that the Plaintiffs' loss, damage, or expense was caused by, in whole, the actions of NRI;
- c) Judgment against NRI for any amounts that may be found due from the [Chohans] to the Plaintiffs, including interest under the *Court Order Interest Act*, RSBC 1996, c. 79;
- d) Judgment against NRI for any amount of costs that the [Chohans] may be declared liable to the Plaintiffs and for the amount of the [Chohans'] own costs of defending this action;

...

[21] Under the Legal Basis, the TPN alleges that NRI has committed the tort of intentional interference with economic relations.

Issues on Appeal

[22] NRI alleges that the judge erred by:

1. accepting that the registration of a Certificate of Pending Litigation (“CPL”) could constitute an “unlawful act” for the purpose of the tort of intentional infliction of economic harm;
2. failing to consider the absence of material facts pleaded in the proposed third party notice to support a claim for the intentional infliction of economic harm; and
3. making an order that permits the filing of a third party proceeding duplicative of Mr. Chohan’s counterclaim in the Separate Action.

[23] The Chohan Respondents submit that the third point raised by NRI was not argued before the judge and therefore should not be considered on the appeal. The respondents submit further that the judge did not err in finding that the claim set out in the TPN is not bound to fail and that the TPN pleaded sufficient material facts to support the claim.

Standard of Review

[24] The parties agree on the applicable standard of review. A determination as to whether a new party should be added to an action is a discretionary decision that attracts appellate deference. This Court will only interfere with a decision to add a new party if the judge misdirected herself, or erred in law or principle, or if the result is so plainly wrong on the facts as to work an injustice: *The Owners, Strata Plan KAS 3410 v. Meritage Lofts Inc.*, 2022 BCCA 109 at para. 21, citing *The Owners, Strata Plan No. VIS3578 v. John A. Neilson Architects Inc.*, 2010 BCCA 329 at para. 41.

[25] Whether a pleading discloses a cause of action is a question of law, reviewable on a correctness standard: *Muldoe v. Derzak*, 2021 BCCA 199 at para. 27; *Kindylides v. Does*, 2020 BCCA 330 at para. 19

Legal Framework

[26] In *Tyson Creek Hydro Corporation v. Kerr Wood Leidal Associates Limited*, 2014 BCCA 17, the Court cited with approval the summary of the legal principles governing third party notices as set out by the chambers judge there (at para. 16):

PURPOSE OF THIRD PARTY PROCEEDINGS

[39] In *Lui v. West Granville Manor Ltd* (1985), 61 B.C.L.R. 315 at 327, 18 D.L.R. (4th) 391 (C.A.) [*Lui*], which was decided under the 1976 Rules, Lambert J.A. stated that the purpose of third party proceedings was to avoid the problem of having different results on the same issue between the same parties and to avoid a multiplicity of proceedings.

[40] In *MacNaughton*, McLachlin J.A. explained, at 21, the purpose of third party proceedings as follows:

Third party pleadings function as a special type of statement of claim. Indeed, the claim they embody could be brought by separate action. But to avoid a multiplicity of proceedings, the rules permit the claim to be made in the action, which has been commenced against the defendant. The object of permitting third party proceedings to be tried with the main action is to provide a single procedure for the resolution of related questions, issues or remedies, in order to avoid multiple actions and inconsistent findings, to provide a mechanism for the third party to defend the plaintiffs claim, and to ensure the third party claim is decided before a defendant is called upon to pay the full amount of any judgment. The avoidance of a multiplicity of proceedings is fundamental to our rules of civil procedure. This has been the case since the reforms effected by the Judicature Acts in the nineteenth century. As Cotton L.J. stated in *Searle v. Choat* (1884), 25 Ch. D. 727: "the whole tenor of the *Judicature Acts* is to require all proceedings as far as possible to be taken in one action".

EXERCISE OF DISCRETION

[41] In *Lui*, Lambert J.A. noted that the court is given a wide discretion under Rule 22(4), to strike out third party proceedings. He indicated at 328 that there were a number of factors that should be considered including:

...What is the fair thing to do? Who suffers prejudice if the discretion is exercised? How much prejudice? Who suffers prejudice if the discretion is not exercised? How much prejudice? Have the parties acted properly and reasonably in their own interests? If a party has not acted properly and reasonably, should he be relieved from the consequences of his own behaviour? Is there another course available to one or other of the parties? Where does the balance of convenience lie? This list is illustrative, but not exhaustive, of the questions that should be asked with respect to the parties before the court. But part of the purpose of the Rule is to avoid multiplicity of proceedings for the benefit of other litigants, so that congestion in the courts is avoided. So it is proper to ask questions in that area as well.

[42] In *Clayton Systems 2001 Ltd. v. Quizno's Canada Corp.*, 2003 BCSC 1573 at para. 9, 27 B.C.L.R. (4th) 247 [*Clayton Systems*], which was decided under the Amended Rule, Allan J. held that in determining the application the court should consider the following factors in determining whether or not to exercise its discretion to grant leave:

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

[27] The various factors identified in these cases inform the exercise of discretion on the part of a judge, or associate judge, in determining whether to permit a TPN to be filed. The treatment of these factors is again entitled to considerable deference.

[28] However, it is open to a judge to decline to grant leave to file a TPN, or to strike a TPN already filed, if the judge is satisfied that the TPN discloses no reasonable cause of action: *Ari v. Insurance Corporation of British Columbia*, 2021 BCCA 180 at para. 67. As noted, this decision is subject to review on a correctness standard.

Discussion

[29] The first two errors alleged by NRI overlap in the sense that both are concerned with the adequacy of the TPN. NRI again submits that the TPN does not properly plead a reasonable cause of action, namely intentional interference with economic relations, and further fails to plead any material facts to support that claim.

[30] I agree that the TPN is deficient in both respects. The focus of the Chohan's claim is on the conduct of NRI who they allege filed both CPL's with the intent of harming their financial interests.

[31] However, the TPN fails to plead an unlawful act by NRI against a third party, in this case the Walias, as the intended purchasers under the contract of sale for the Property.

[32] The term “unlawful” for the purposes of the tort, has been described by the Supreme Court of Canada in *A.I. Enterprises Ltd. v. Bram Enterprises Ltd.*, 2014 SCC 12 at para. 5 as follows:

Conduct is unlawful if it would be actionable by the third party or would have been actionable if the third party had suffered loss as a result of it. The alleged misconduct of the defendants in this case was not unlawful in this sense and therefore they cannot be held liable on the basis of the unlawful means tort.

[33] One of the allegedly unlawful acts committed by the party in A.I. was the filing of what was described at trial as a “baseless” certificate of pending litigation against the subject property. That was not sufficient to ground the unlawful means tort (unlawful means being another way to describe the unlawful interference with economic relations tort). Respectfully, I do not agree with the respondents that the decision in *A.I.* is distinguishable on the basis that there were only prospective purchasers there whereas in this case, there were actual purchasers—the Walias—who were under contract.

[34] Again, even taking the most generous view of the TPN, it does not plead any unlawful act committed against the Walias by NRI that would be actionable on the part of the Walias. Further, leaving aside what is set out in the TPN, counsel for the respondents was unable to identify what such an actionable or unlawful act would be that could support the claim, apart from repeating the allegation in the TPN that the filing of the TPN was intended to, and did, interfere with the contract of sale for the Property.

[35] The respondents rely on the Judge’s observations that the evidence to support the claim that the CPL was wrongfully filed will have to be canvassed and tested at trial. Respectfully, this fails to recognize the distinction between material facts and evidence. I agree that evidence will be needed to determine if the claim that the CPL was improperly filed can be substantiated. However, the issue at this stage is not whether the evidence will support the claim but rather whether the pleading i.e., the TPN, properly pleads a cause of action and the requisite material facts.

[36] Here, the TPN does neither. In addition to not pleading the requisite elements of the tort, specifically an unlawful act committed against the third party, the TPN fails to plead material facts that would support such a claim, even if available. The only material fact that might go towards the claim is the fact of filing the second CPL, but that is not a fact supporting the claim of an independent actionable wrong committed against the third party.

Conclusion

[37] For the reasons stated, I find that the TPN filed by the respondents fails to plead a reasonable claim, specifically the tort of intentional interference with economic relations. Given this conclusion, it is unnecessary to address NRI’s abuse of process argument.

[38] I would therefore allow the appeal and set aside the order below granting the respondents leave to file the third party notice.

[39] The appellant is entitled to its costs in this Court and in the Court below.

[40] **STROMBERG-STEIN J.A.:** I agree.

[41] **WINTERINGHAM J.A.:** I agree.

[42] **STROMBERG-STEIN J.A.:** The appeal is allowed. The order granting leave to file a third-party notice against NRI Solutions Ltd. is set aside. The appellant is entitled to costs in this Court and before the judge below.

“The Honourable Justice Skolrood”