IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Nijjar v. Nijjar,*
2023 BCSC 1279

Date: 20230331
Docket: S211355
Registry: Vancouver

2023 BCSC 1279 (CanLII)

Between:

Bhupinder Nijjar

Plaintiff

And

Randeep Nijjar

Defendant

Before: The Honourable Mr. Justice Veenstra

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:	R. Morse S. Ovens D. Boere, Articled Student
Counsel for the Defendant:	A. Kurt
Place and Date of Hearing:	Vancouver, B.C. March 31, 2023
Place and Date of Judgment:	Vancouver, B.C. March 31, 2023

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[1] **THE COURT:** The defendant applies for an order that the trial in this matter, presently scheduled for seven days commencing May 8, 2023, be adjourned.

[2] The plaintiff is the defendant's father. Those two parties, as well as the defendant's mother and brother, all had involvement in the area of commercial hotels and real estate.

[3] Some of the underlying background was summarized by Justice Kirchner in reasons for judgment on an interlocutory application from March 2022, which are indexed at 2022 BCSC 327. I note that given that the key individuals all bear the same surname, Justice Kirchner referred to each by their commonly used nicknames: the plaintiff being Bob, the plaintiff's wife and defendant's mother being Raji, the defendant being Nick, and the defendant's older brother being Raj.

[4] At paras. 16-18, Justice Kirchner commented:

> [16] In the meantime, Nick attended the University of Victoria in the early 2000s and returned to Vancouver in 2006 after receiving his bachelor's degree in psychology. He told Bob and Raji that he also wanted to learn how to manage real estate development. He had no money of his own to invest so Bob pursued a project with Nick in which Bob invested all of the required capital but Nick would work on the project to learn the business. Bob deposes that Nick worked on a contract basis and had no equity in this project or right to the profits. This agreement was not reduced to writing.
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> [17] Also in 2006 Nick obtained his real estate licence and, according to Bob, was paid commissions for certain real estate transactions in Bob and Raji's businesses. Bob deposes that Nick was paid these commissions regardless of whether he actually provided real estate services. Bob says this is one way he and Raji hoped Nick would "get on his feet".
>
> [18] In the years that followed, Nick worked in various aspects of Bob and Raji's businesses. From approximately 2008 to 2012 Nick worked in a management role for 6859 Ltd which operated the Quality Hotel. Nick was also designated as the general manager for a Coast Hotel location in which Bob, Raji, and Raj invested through 0957080 B.C. Ltd. Nick did not invest in this company and, while he was designated general manager for the hotel, Bob deposes Nick's responsibilities were limited and many of the tasks ordinary performed by a general manager were done by others. Nick did not maintain an office at the Coast Hotel.

[5] In early 2020, certain financial irregularities were discovered with respect to the various corporate entities. The various Nijjar family members initially worked

together to investigate those irregularities. In April 2020, Bob, Raji, and various corporate entities commenced an action against a former accountant.

[6] Later in 2020, Bob, Raji, and Raj on the one part and Nick on the other had a falling out. In January 2021, Nick commenced an action against his parents and brother, alleging that there was a "Nijjar Family Enterprise," including the real estate development and hotel businesses. Over the next two months, Bob and companies controlled by him commenced three actions against Nick and companies controlled by him, all purporting to seek judgment on specific loans said to have been made. This is one of those three actions.

[7] In September 2021, Bob filed a notice of trial in this action, scheduling the trial for seven days in February 2023.

[8] Nick applied to have all four actions tried together. That application was dismissed by Justice Kirchner on March 3, 2022, by way of the judgment I mentioned above. Since that time, each of the four actions has been proceeding on a separate track toward a separate trial date. I am advised that the trial of Action S211357 is presently scheduled to commence on Monday, April 3, 2023, and go for seven days.

[9] A case planning conference was held in this proceeding on July 12, 2022. At that time, various deadlines were set, including a deadline that examinations for discovery be completed by November 15, 2022.

[10] Up to that point, Nick had been represented by counsel, Mr. Warnett. It appears that in about April 2022, Mr. Warnett had advised Nick that he would not be able to continue to represent him. In a hearing in one of the other actions, after Mr. Warnett was off the record, Nick advised the Court that Mr. Warnett had, by April 2022, already "gone into credit" and was unwilling to continue his representation on that basis. On July 13, 2022, Nick filed a notice of intention to act in person.

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[11] At some point in 2022, Bob commenced a petition seeking the appointment of a receiver over two numbered companies controlled by Nick. That petition was heard, and a receivership order granted on August 22, 2022.

[12] As noted, the trial of this proceeding was scheduled for seven days commencing February 6, 2023. Bob scheduled a trial management conference for October 31, 2022. Nick, who was self-represented by that point, did not appear. Various orders were made for preparation of a common book of documents and other administrative matters in respect of the trial.

[13] On November 1, 2022, there was a further case planning conference in this action. Nick again did not attend. Justice Walker ordered that Nick provide responses to various examination for discovery requests by November 15, 2022. He did not do so.

[14] On Friday, February 3, 2023, Nick attempted to apply without notice for an adjournment of the trial that was scheduled to commence on Monday, February 6. The application was not heard; rather, it was adjourned to be heard by the trial judge at the commencement of trial. However, there was no judge available to hear the trial. It was rescheduled by the court registry for eight days commencing on May 8, 2023.

[15] At the beginning of March 2023, Nick retained a new lawyer, Mr. Ganapathi, to represent him in both this action and in Action S211357. Mr. Ganapathi attended a trial management conference in this matter on March 6, 2023, and advised the Court at that time that he intended to bring an application to adjourn the trial. Master Hughes directed that if Nick intended to bring on an application to adjourn the trial, that application was to be filed and delivered no later than March 15, 2023, and should be heard no later than March 31, 2023.

[16] The present notice of application was filed on March 15, 2023, and set for hearing on March 31, 2023.

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[17] The adjournment is sought on the basis that new counsel will be unable to prepare this matter for trial. There is said to be over 30,000 documents. There has been no examination for discovery of Bob with respect to the issues in this action. A number of pretrial steps remain to be completed, and Mr. Ganapathi is more immediately concerned with the upcoming trial in Action S211357. The time between the scheduled end of that trial and the start of the trial in this action is approximately three and a half weeks.

[18] The defendant has, in addition to seeking an adjournment, asked for an extension of the deadline for completion of examinations for discovery, given that the deadline passed several weeks before Mr. Ganapathi was retained and at a time when Nick was self-represented. There has been, to this date, no discovery by the defendant of the plaintiff. The plaintiff objects that, by virtue of Rule 5-3(8)(b) of the *Supreme Court Civil Rules*, the only way a deadline in a case planning order can be extended is by holding a further case planning conference. The plaintiff advises that it will oppose any such application.

[19] It seems clear that any application to extend that deadline will require affidavit evidence, and Rule 5-3(2)(a) prohibits the Court at a case planning conference from hearing an application supported by affidavit evidence. In my view, it cannot be that Rule 5 effectively prevents contested extensions to deadlines from being granted. I note that Rule 5-3(1)(n) authorizes the Court at a case planning conference to give directions respecting the conduct of any application.

[20] Given the importance to the parties of having my decision on the adjournment application, and given the lack of detailed submissions on the interplay of the various subrules of Rule 5, I do not propose to attempt to resolve those various provisions at this time. It does appear, however, that the process required to obtain an extension of the deadline for discovery of the plaintiff, which would appear to be essential for the defendant to prepare for trial, is going to be a difficult matter that will require at least one, if not more, attendances before the court and appropriate notice given of each such attendance.

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[21] The plaintiff focused his submissions on allegations that the defendant in this and in the other actions has sought to delay hearings and has intentionally failed to take the steps necessary to have the case ready for trial. The plaintiff asserts that there is no reason examinations for discovery could not have been completed before Mr. Warnett ceased acting, or by the defendant himself while he was self-represented. The plaintiff points to the fact that the defendant obtained a last-minute adjournment of a trial in another action in December 2022. The plaintiff points to its own letters to the defendant while he was self-represented instructing him that he must retain counsel sooner rather than later. The plaintiff also points to various case planning and trial management deadlines that the defendant has not complied with. Outstanding matters include responses to examination for discovery requests and preparation of a common book of document, document agreement, and trial schedule.

[22] The plaintiff suggests that the defendant indicated informally as early as February 6 that he was retaining counsel, but that Mr. Ganapathi did not go on record until the beginning of March. The plaintiff suggests that I should infer that this was an intentional and strategic delay. The plaintiff says that any prejudice to the defendant is "self-inflicted" given his failure to comply with court-ordered deadlines and his delays in retaining counsel.

[23] The plaintiff argues that he has been prejudiced by already having incurred the cost of preparing for the February 2023 trial that was adjourned because of the lack of a judge, and that he suffers ongoing stress from having this matter outstanding.

[24] The parties both referred me to *Navarro v. Doig River First Nation*, 2015 BCSC 2173, and the principles summarized therein by Justice Dillon. Both also drew my attention to various cases applying those general principles in specific circumstances.

[25] As Justice Dillon stated at para. 19 of *Navarro*, the paramount consideration on an adjournment application is the interests of justice in ensuring that there will

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remain a fair trial on the merits of the action. Ultimately, I am persuaded that a fair trial cannot occur given the complexity of this matter, the volume of documents, the lack of any examinations for discovery, the fact that only five weeks remain before the scheduled trial date, and the fact that counsel will be spending two of those five weeks conducting the trial of a related action in S211357.

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[26] The object of the *Supreme Court Civil Rules* is the expeditious and speedy resolution of matters on their merits. I have significant concerns about whether a trial on the scheduled date could be fairly determined "on the merits."

[27] In this case, Mr. Ganapathi put the plaintiff on notice as soon as he was retained that he would be seeking an adjournment. The defendant has not previously obtained an order to adjourn the trial in this action. The adjournment application was brought on some five weeks in advance of trial, thus avoiding any unnecessary trial preparation beyond that already incurred in respect of the February trial date.

[28] I recognize the plaintiff's frustration at the various steps that have been taken in the related proceedings and that there have been delays in all of the actions. That, to some degree, reflects the challenges faced by a self-represented litigant. And while I acknowledge the fact that a party is self-represented does not entitle them to a “pass” (to use the words of Justice Dillon in *Navarro* at para. 27), the court does have an obligation to do what is reasonably possible to prevent unfair disadvantage to self-represented parties (*Baring v. Grewal*, 2022 BCCA 42 at paras. 105-108).

[29] In this case, it is the plaintiff who chose to file multiple actions advancing discrete claims rather than make a single counterclaim in the action that Nick had already commenced. The plaintiff took the position, which was successful before Justice Kirchner, that there should be separate trials of each proceeding. The parties are now in the midst of dealing with the results of that order. The preparation required for each of these separate trials is extensive. The plaintiff is clearly well-funded and has been advancing his various claims aggressively, while the defendant

is struggling to obtain representation and comply with what is required to keep up with the requirements of each of the different actions.

[30] In my view, the prejudice to the defendant of requiring this trial to proceed outweighs the prejudice to the plaintiff of an adjournment. Granting the adjournment now minimizes the risk of any unnecessary costs being incurred and allows both parties to focus on the trial of the other action beginning Monday.

[31] I would grant the application for an adjournment of this trial and adjourn generally the other relief sought in the defendant's notice of application.

[32] In my view, although the defendant has been successful on this application, given the nature of the allegations made and the fact that the defendant is currently in breach of a number of court-required deadlines, I would not grant the defendant his costs; rather, I would order that the costs of today's application be in the cause.

[SUBMISSIONS]

[33] THE COURT: I am not going to order that the new trial date be peremptory. I am also not saying anything about how long the trial should be scheduled for.

[SUBMISSIONS]

[34] THE COURT: I am not setting a new trial date.

“Veenstra J.”

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