IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Sunny International Trading Ltd. v. Van Pro Disposal,* 2023 BCSC 230

Date: 20230213
Docket: S227553
Registry: Vancouver

2023 BCSC 230 (CanLII)

Between:

Sunny International Trading Ltd.

Appellant

And

Van Pro Disposal

Respondent

- and -

Docket: S227554
Registry: Vancouver

Between:

China Pottery Trading Canada Ltd.

Appellant

And

Van Pro Disposal

Respondent

Before: The Honourable Justice E. McDonald

On appeal from: An order of the Provincial Court of British Columbia, dated August 16, 2022 (Sunny International Trading Ltd. v. Van Pro Disposal, Docket No. C29207, Richmond Registry; China Pottery Trading Canada Ltd. v. Van Pro Disposal, Docket No. C29208).

Oral Reasons for Judgment

For the Appellant: N. Wang

For the Respondent:	X. Fan
Place and Date of Hearing:	Vancouver, B.C. February 13, 2023
Place and Date of Judgment:	Vancouver, B.C. February 13, 2023

2023 BCSC 230 (CanLII)

2023 BCSC 230 (CanLII)

Introduction

[1] On February 13, 2023, two appeals came on for hearing before me. The appeals are from a trial judge's order made in the Provincial Court of British Columbia on August 16, 2022 involving claims brought by each of Sunny International Trading Ltd. ("Sunny") and China Pottery Trading Canada Ltd. ("CPTC") involving the same allegation against Van Pro Disposal ("Van Pro"), namely, that Van Pro unlawfully seized forklifts and it was liable for damages related to the unlawful seizure.

[2] For the reasons that follow, I am dismissing the appeals.

Background

[3] The appellants brought claims in the Provincial Court related to Van Pro's seizure of forklifts.

[4] Each of the appellants claimed damages arising from Van Pro's seizure of the forklifts. Van Pro denied the claims, asserting that it seized the forklifts lawfully pursuant to an Order for Seizure and Sale issued by the Provincial Court following a successful action in the Civil Resolution Tribunal ("CRT").

[5] There was no Notice of Objection filed or procedure followed by the appellants to dispute the decision of the CRT.

[6] Following a two-day trial that included *viva voce* evidence, the trial judge pronounced oral reasons for judgment and made an order dismissing the claims by Sunny and CPTC.

Issue

[7] CPTC states in the notice of appeal filed in this Court under docket no. S227554, that it appeals from the Order on the grounds that the trial judge erred by dismissing the claim when CPTC should not have been made a party to Van Pro's lawsuit in the CRT. CPTC takes the position that it was not a signatory to a contract

with Van Pro nor had it been incorporated at the time of the contract. It appears that CPTC failed to appear at the hearing of Van Pro's claim in the CRT.

[8] Sunny states in the notice of appeal filed in this Court under docket no. S227553, that it appeals from the Order on the grounds that the trial judge erred by dismissing the claim when the forklifts that Van Pro seized belonged to it and it was not a signatory to the contract with Van Pro. It also appears that Sunny failed to appear at the CRT hearing of Van Pro's claim.

[9] The issue on these appeals is whether the trial judge erred in dismissing the appellants' claims.

Analysis

[10] Mr. Wang, who is not a lawyer, represents the appellants on these appeals. He made submissions and explained the issues concerning the appellants' grounds for these appeals. Ms. Fan, who is not a lawyer, represents the respondent on these appeals and she explained in her submissions why the respondent is of the view that the appeals should be dismissed.

[11] The trial judge considered whether CPTC is different from the company named in the customer service agreement with Van Pro including by considering the certificates of incorporation. The trial judge notes that the customer service agreement was with China Pottery Trading (Canada) Limited ("CPT"). The trial judge considered but did not accept Mr. Wang's evidence about CPTC's knowledge of the claim against it or its reasons for failing to appear at the CRT hearing.

[12] The trial judge accepted evidence that CPTC knew of the CRT claim by Van Pro and initially defended against it but then failed to participate in the process despite notice to CPTC's accountant. Ultimately, the trial judge concluded that the appellants could not object to the CRT decision when they had failed to participate in the process.

2023 BCSC 230 (CanLII)

[13] In their appeal, the appellants assert essentially the same issues with the CRT decision that were considered by the trial judge. The appellants do not assert that the trial judge erred in finding that no notice of objection or other process had been followed to challenge the CRT decision and that they failed to appear at the CRT hearing. I was not taken anything in the evidence before the trial judge to show that the judge misapprehended the evidence or failed to consider some aspect of the evidence concerning this issue. In essence, I am being asked to hear the same argument and consider the same evidence but to come to a different conclusion than was reached by the trial judge.

[14] The trial judge concluded that there was no basis to challenge the CRT decision and the claims were dismissed on that basis. On these appeals, the appellants have demonstrated no error in principle that would permit this Court to interfere with the order of the trial judge dismissing the claims due to the conclusion that there was no basis to challenge the CRT decision.

[15] While the trial judge found the claims could be dismissed because there was no basis to challenge the CRT decision, the trial judge also went on to consider the claims that Van Pro had unlawfully seized the forklifts. The appellants also allege errors by the trial judge in dismissing the claims on the grounds stated.

[16] After reviewing the evidence, the trial judge concluded that CPTC failed to prove its claim that the agreement was between CPT and Van Pro, not CPTC and Van Pro. Based on a review of the evidence, the trial judge said that even if CPTC was a new company incorporated in 2018, it took over operations of CPT and the contract at issue meant that it was binding on the heirs, successors and permitted assigns. In other words, it did not matter that CPTC and CPT were different corporate entities because the contract continued to bind CPTC in its capacity as the successor company.

[17] On this appeal, the appellants continue to advance the argument that CPTC was not party to the agreement with Van Pro and since it was not incorporated until 2018, it could not be bound by the contract. That was not the conclusion reached by

2023 BCSC 230 (CanLII)

the trial judge based on the review of the evidence. The trial judge found that since CPTC took over the inventory and operations of CPT in August of 2018, including by moving into the building premises of CPT and taking over the business place and acquiring all of assets and obligations such as the contract with Van Pro it was bound by the contract. However, I was not taken to any evidence that the trial judge failed to consider nor any legal principle that the trial judge applied incorrectly in reaching that conclusion.

[18] In regards to Sunny's claim that it was the rightful owner of the forklifts that Van Pro unlawfully seized, the trial judge considered the promissory note issued by CPTC to Sunny in exchange for the transfer of assets, including the forklifts. The trial judge disagreed with Sunny's submission at trial to the effect that title to the assets did not transfer until after CPTC had paid all monies outstanding to Sunny.

[19] The trial judge did not accept Mr. Wang's evidence about the transfer of assets including because the agreement dated June 15, 2019 stated that Sunny was transferring all of its assets to CPTC and in exchange CPTC issued a promissory note. The trial judge found nothing in the agreement to effect that, among other things, the transfer was contingent on CPTC paying off all monies owing to Sunny. In dismissing Sunny's claim, the trial judge concluded that on June 15, 2019, CPTC owned all of Sunny assets and giving Sunny no claim to the forklifts when they were seized on behalf of Van Pro in August 2020.

[20] Mr. Wang on behalf of the appellants makes the same arguments that were made to the trial judge. In effect, Mr. Wang submits that I ought to consider the same arguments and evidence presented at trial and reach a different conclusion than the trial judge. However, I am not entitled to carry out a retrial of the claims on this appeal. My ability to substitute my own view for that of the trial judge is circumscribed by well established limitations. To review a finding of fact, the appellants must demonstrate palpable and overriding error and to review a question of mixed fact and law, the appellants must also demonstrate palpable and overriding error unless it is shown the trial judge made an extricable error of law. For questions

2023 BCSC 230 (CanLII)

of law, the standard of review is correctness: *MacDonald v. Canada*, 2020 SCC 6 at para. 52.

[21] While I understand that the appellants disagree with the order of the trial judge, I find the appellants have failed to demonstrate, to the extent they allege errors related to findings of facts or questions of mixed fact and law, any palpable or overriding error. I was not taken to any evidence that the trial judge is alleged to have overlooked or misapprehended. To the extent the appellants assert an error related to a question of law, the appellants have not demonstrated that the trial judge erred, for example, in reaching the conclusion that they could not properly object to the CRT decision by making damage claims in the Provincial Court.

[22] I therefore dismiss the appeals and award costs to the respondents.

“E. McDonald J.”

2023 BCSC 230 (CanLII)