

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Skyacres Turkey Ranches Ltd. v. Twin
Maple Construction Ltd.*,
2024 BCSC 957

Date: 20240516
Docket: S233901
Registry: New Westminster

Between:

Skyacres Turkey Ranches Ltd. and Stephen James Brooks

Plaintiffs

And

Twin Maple Construction Ltd. and Dustin Ronald Born

Defendants

- and -

Docket: S235030
Registry: New Westminster

Between:

Twin Maple Construction Ltd. and Dustin Ronald Born

Plaintiffs

And

**Skyacres Turkey Ranches Ltd., Dudley Caldbeck Brooks,
Shumei Brooks and Stephen James Brooks**

Defendants

Before: The Honourable Justice Iyer

Oral Reasons for Judgment

In Chambers

Counsel for Skyacres Turkey Ranches Ltd.,
Dudley Brooks, Shumei Brooks and
Stephen Brooks:

L. Smeets

Dustin Born, appearing in person and on behalf of Twin Maple Construction Ltd.:

D. Born

Place and Date of Hearing:

New Westminster, B.C.
May 15 and 16, 2024

Place and Date of Judgment:

New Westminster, B.C.
May 16, 2024

Overview

[1] These cross-applications arise out of two actions that are being heard together. The underlying dispute concerns the construction of a turkey barn by Dustin Born through his company, Twin Maple Construction Ltd. ("Twin Maple"), for Skyacres Turkey Ranches Ltd. ("Skyacres"), its director Dudley Brooks, as well as Shumei Brooks and Stephen Brooks.

[2] The parties entered into an agreement in July 2020 and construction commenced sometime thereafter. Things did not go well. The contract was terminated in early December 2020. There are allegations that assaults involving Mr. Born, Stephen Brooks, and Shumei Brooks occurred at that time.

[3] On December 3, 2020, Skyacres and Stephen Brooks filed a notice of civil claim ("NOCC") against Twin Maple and Mr. Born. It sought damages on the basis that Twin Maple and Mr. Born had repudiated the contract, damages for trespass, assault and battery, discharge of a builders' lien Mr. Born and Twin Maple had placed on the property, and a fine. I refer to this as the "Skyacres Action".

[4] On January 5, 2021, Twin Maple and Mr. Born filed a NOCC against Skyacres and Dudley, Shumei, and Stephen Brooks seeking debt or contractual damages or damages on a *quantum meruit* basis, as well as punitive and aggravated damages. I refer to this as the "Twin Maple Action".

[5] I am told that two years later, Mr. Born shot Shumei Brooks, injuring her, and shot and killed the Brooks' dog. I am told Mr. Born has pleaded guilty to criminal charges arising out of this incident and that the Brooks have commenced a civil action against Mr. Born relating to this incident. I will refer to that civil action as the "Assault Action".

[6] The Brooks apply to have the Assault Action heard together with the Skyacres and Twin Maple Actions. Mr. Born opposes that application. A hearing before A.J. Krentz is underway.

[7] Mr. Born and Twin Maple now apply under Rule 9-7 to have the Twin Maple Action determined summarily, including all liability issues and damages relating to the contract. However, Mr. Born submits that damages relating to the tort claims should be determined separately.

[8] Skyacres and the Brooks apply under s. 18 of the *Supreme Court Act*, the rules, and the inherent jurisdiction of this court to have Mr. Born declared a vexatious litigant or, alternatively, to have him and Twin Maple prohibited from filing any further interlocutory applications in these actions without leave of the court.

Summary trial application

[9] Rule 9-7 permits the court, upon application, to decide some or all issues in an action on a summary basis. Rule 9-7(11) requires the court, either before or at the hearing of the summary trial application, to decide whether the issues raised are suitable for summary determination and whether a summary trial would assist in the effective resolution of the issues.

[10] Rule 9-7(15) addresses what the court should consider in making the determination required by Rule 9-7(11).

[11] In his recent decision in *Baxandall v. Campbell*, 2024 BCSC 529 at para. 49, Justice Riley summarized the well-established list of factors:

[49] Rule 9-7(15)(a) sets out the circumstances in which the court may grant judgment on a summary trial application, either on a specific issue or generally. Judgment may be granted by way of summary trial unless the court is (i) unable to find the facts necessary to decide the issues, or (ii) of the opinion that it would be unjust to decide the issues summarily. In considering whether it would be unjust to decide a matter in a summary trial, the court should have regard to a variety of factors, including: the amount involved, the complexity of the case, its urgency, any prejudice associated with a delay in the proceedings, the cost of proceeding to a full trial by comparison to the amount involved, and the history and status of the proceedings: *Inspiration Mgmt. Ltd. v. McDermid St. Lawrence Ltd.* [citation omitted]. Other relevant factors include the costs of the litigation, whether credibility is a critical factor in resolving the issues, whether a summary trial will create unnecessary complexity in the resolution of the case, and whether it would result in "litigating in slices": *Gichuru v. Pallai* [citation omitted].

[12] Here, the most important factor is the inability of the court to find the facts necessary to decide the issues on a summary basis. That is for two principal reasons: the nature of the evidence before the court and the importance of credibility to the issues.

[13] As Mr. Born acknowledged, the evidence tendered by Twin Maple and himself is voluminous. One affidavit includes over 1500 pages of exhibits and there are nine more binders of material. While the volume of documentary evidence is not a bar to a summary trial, it can indicate that a summary trial may not be efficient. More problematically, the affidavit with the voluminous pages of exhibits is deficient. The exhibit to which a paragraph in the body of that affidavit relates is not referenced in that paragraph. Instead, Mr. Born lists Exhibits A to II at the end of that affidavit. Without searching for hours, it is not possible to connect the exhibit to the relevant paragraphs in the body of the affidavit. Mr. Born also explained that there are numerous exhibits that are not referenced in his affidavit at all.

[14] I appreciate that as a self-represented litigant, Mr. Born is doing the best he can, and that he has devoted a great deal of time and energy to preparing this material. However, much of the documentary evidence is not admissible in its current form. What is required is a witness, likely Mr. Born, to take the stand and testify in order to ground the documentary evidence and present the court with a coherent and complete account. That is the only way to ensure an adequate and comprehensible evidentiary record.

[15] Credibility is a critical issue in both the Skyacres and the Twin Maple Actions. As Mr. Born repeatedly emphasized in his submissions, he considers that Skyacres and the Brooks, especially Shumei Brooks, are lying and that the facts alleged in their pleadings are false. Many of the facts pleaded by these parties turn on oral evidence, such as whether the written contract between the parties was modified by oral agreement and, if so, what those agreements were.

[16] For these reasons, I conclude that the Twin Maple and Skyacres Actions are not suitable for summary trial and I dismiss that application.

Vexatious litigant application

[17] Section 18 of the *Supreme Court Act* permits the court to order that a person may not commence a proceeding without leave of the court:

18 If, on application by any person, the court is satisfied that a person has habitually, persistently and without reasonable grounds, instituted vexatious legal proceedings in the Supreme Court or in the Provincial Court against the same or different persons, the court may, after hearing that person or giving the person an opportunity to be heard, order that a legal proceeding must not, without leave of the court, be instituted by that person in any court.

[18] The court also has inherent jurisdiction to control its process in respect of vexatious litigants: *Gichuru v. Pallai*, 2018 BCCA 78 at para. 74.

[19] Section 18 of the *Supreme Court Act* concerns situations where a litigant is commencing multiple proceedings. Such cases may include those same litigants filing multiple interlocutory applications. In this case, Mr. Born and Twin Maple have only commenced one action. Mr. Born is a defendant to two other actions commenced by the Brooks. These facts demonstrate that Mr. Born is not a vexatious litigant within the meaning of s. 18. When I pointed this out to counsel for Skyacres and the Brooks, he withdrew the s. 18 orders he was seeking against Mr. Born and Twin Maple.

[20] That leaves the alternative orders sought against Mr. Born and Twin Maple, namely that they be prohibited from filing any further interlocutory applications in the Skyacres Action, the Twin Maple Action, and the Assault Action without leave of the court.

[21] The evidence establishes that Mr. Born has filed four applications in the joint Skyacres/Twin Maple Actions. On March 27, 2024, he filed an application seeking 24 document production and/or disclosure orders. As I understand it, after coming before AJ Nielsen, he consolidated his request in a new application that he filed on April 12, 2024, seeking five such orders. On April 22, 2024, he filed an application seeking removal of certain material from the record, which was denied. On April 24, 2024, Mr. Born filed the summary trial application that I have just decided.

[22] Although the short period of time within which Mr. Born filed these four applications is concerning, it does not at present rise to the level where the prohibition Skyacres and the Brooks are seeking is warranted.

[23] Having heard the parties over two days, it is abundantly clear that there is a great deal of acrimony between the parties that, very unfortunately, has extended to include Mr. Smeets, counsel for Skyacres and the Brooks. I have already admonished Mr. Born and cautioned him on the record that he is not to make allegations of fraud, theft, or dishonesty against the opposing parties or their counsel.

[24] In order for this litigation to proceed in an efficient, effective, and civil manner, judicial case management is required. I exercise my power under Rule 5-1 to direct that a case planning conference occur after AJ Krentz rules on the joinder application.

Conclusion

[25] To summarize, I dismiss both applications, with each party to bear its own costs.

[26] Under Rule 5-1(2), I direct Skyacres and the Brooks to request a case planning conference pursuant to Rule 5-1(1) within seven days of the release of AJ Krentz's decision on the matters before him.

[27] Document disclosure issues shall be listed as an item on the case planning conference proposal agenda.

[28] I further direct that the parties must provide AJ Krentz with a copy of this ruling at their next appearance before him, and also attach a copy of this ruling to

their case plan proposals. I will provide a copy of the edited transcript of these reasons to the parties as soon as I am able.

[29] That concludes my ruling.

“Iyer J.”