COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *RGN Management Limited Partnership v. 7th Light Education Group Inc.,* 2024 BCCA 220

Date: 20240617
Docket: CA48697

Between:

RGN Management Limited Partnership by its general partner RGN Management GP Inc.

Appellant/
Respondent on Cross Appeal
(Plaintiff)

And

7th Light Education Group Inc. sometimes doing business as Seventh Light Education Group Inc. and sometimes doing business as Centre for Entertainment Arts

Respondent/
Appellant on Cross Appeal
(Defendant)

Before: The Honourable Madam Justice Fenlon
(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated October 26, 2022 (*RGN Management Limited Partnership v. 7th Light Education Group Inc.*, 2022 BCSC 1866, Vancouver Docket S211324).

Counsel for the Appellant:	M.G. Swanson S. Gallagher
Counsel for the Respondent:	D. Moonje
Place and Date of Hearing:	Vancouver, British Columbia April 24, 2024
Place and Date of Judgment, with Written Reasons to Follow:	Vancouver, British Columbia April 24, 2024
Place and Date of Written Reasons:	Vancouver, British Columbia June 17, 2024

Summary:

The respondent filed a cross-appeal in this matter but subsequently realized that a cross appeal was not required since the respondent did not seek to vary the order of the judge below, but rather to support it on different grounds. The respondent now seeks leave to file an amended response factum on the condition that it discontinue its cross-appeal.

Held: Application allowed. A cross-appeal is not required and it is in the interests of justice to grant leave to amend the respondent's factum to include the arguments previously contained in the cross-appeal factum. The procedural confusion arose because the order below was framed as dismissing the application based on one argument raised, and allowing the application based on the alternative argument. The order should have stated only the relief granted, and should not have included the judge's reasons.

Reasons for Judgment of the Honourable Madam Justice Fenlon:

Introduction

[1] On April 24, 2024, I granted the respondent's application for leave to file an amended factum, with reasons to follow. These are my reasons for that decision.

Background

[2] The procedural history leading to this application is a convoluted one, which demonstrates the mischief that can be caused by a poorly drafted order.

[3] The appellant RGN Management Limited Partnership ("RGN") obtained a garnishing order before judgment which required Langara College to pay into court money it would otherwise have paid to the respondent, 7th Light Education Group Inc. ("7th Light"). The garnishing order related to two invoices 7th Light had issued to Langara. Upon receiving the garnishing order, Langara paid into court the full amounts owing under both invoices, totaling $795,539.62. The first invoice ("Invoice 1043") was for $53,781.30 and was conceded by 7th Light to be a debt or obligation owed to it by Langara. The second invoice ("Invoice 1044") was for $741,758.47. 7th Light did not agree that this sum was subject to garnishment.

[4] 7th Light filed an application seeking release of the amount garnished under Invoice 1044. It argued that the order should either be set aside or varied because

RGN did not meet the requirements of s. 3(2) of the *Court Order Enforcement Act,* R.S.B.C. 1996, c. 78 [*Act*], which provides:

> **3**
>
> …
>
> (2) A judge or a registrar may, on an application made without notice to any person by
>
> (a) a plaintiff in an action…
>
> on affidavit by himself or herself or his or her solicitor or some other person aware of the facts, stating,
>
> ….
>
> (d) if a judgment has not been recovered,
>
> (i) that an action is pending,
>
> (ii) the time of its commencement,
>
> (iii) the nature of the cause of action,
>
> (iv) the actual amount of the debt, claim or demand, and
>
> (v) that it is justly due and owing, after making all just discounts,
>
> and stating in either case
>
> (e) that any other person, hereafter called the garnishee, is indebted or liable to the defendant, judgment debtor or person liable to satisfy the judgment or order, and is in the jurisdiction of the court, and
>
> (f) with reasonable certainty, the place of residence of the garnishee,
>
> order that all debts due from the garnishee to the defendant, judgment debtor or person liable to satisfy the judgment or order, as the case may be, is attached to the extent necessary to answer the judgment recovered or to be recovered, or the order made, as the case may be.

[5] 7th Light submitted that Invoice 1044 was a “conditional advance” and merely an estimate of what Langara would have to pay 7th Light for services 7th Light had contracted to provide to Langara over the coming semester. Since the funds to be paid were an advance against which future services would be billed, 7th Light argued that the funds were not a debt, obligation or liability as defined in s. 3(1) of the *Act*.

[6] In the alternative, 7th Light sought a release of the funds under s. 5 of the *Act* which provides in part:

> **5** (1) If a garnishing order is made against a defendant or judgment debtor, he or she may apply to the registrar or to the court in which the order is made for a release of the garnishment, and if a judgment has been entered against him or her, for payment of the judgment by instalments.
>
> (2) If, under subsection (1), the registrar or judge considers it just in all the circumstances, he or she may make an order releasing all or part of the garnishment and if he or she does and a judgment has been entered, he or she must set the amounts and terms of payment of the judgment by instalments.

[7] In reasons for judgment issued on October 26, 2022, the chambers judge found the garnishing order was properly granted under s. 3, but concluded the funds due under Invoice 1044 were subject to a *Quistclose* trust, and therefore could not be attached by the garnishing order. In short, the judge did not accept 7th Light's first argument under s. 3, but accepted its alternative argument that the funds that had been garnished under Invoice 1044 were not properly attached by the garnishing order and should be released to 7th Light under s. 5 of the *Act*.

[8] Unfortunately, the judge articulated the outcome of the application before her in relation to the alternative arguments, dismissing one and allowing the other:

> **VI. Disposition**
>
> [87] [7th Light's] application to set aside or vary the Order for failure to comply with [the *Act*], s. 3(2) is dismissed.
>
> [88] The 1044 Payment was not attached by the Order. [7th Light's] application under [the *Act*], s. 5 for the release of the 1044 Payment funds to [7th Light] is granted accordingly.
>
> [Emphasis added.]

[9] 7th Light, having succeeded in obtaining the relief it sought, drafted up an order directing payment to it out of court of the $741,539.47. However, RGN would not accept that form of order, insisting the order track the language used by the judge in her disposition. Unfortunately, 7th Light acceded to that demand. As a result, the entered order reads as follows:

THIS COURT ORDERS that:

1. 7th Light Education Group Inc.'s application to set aside or vary the Garnishing Order Before Judgment made on September 28, 2021 (the "Garnishing Order") for failure to comply with section 3(2) of the *Court Order Enforcement Act*, R.S.B.C. 96, c. 78, is dismissed;
2. The sum of $741,539.47, paid by Langara College (Garnishee) pursuant to the Garnishing Order was not attached by the Garnishing Order and 7th Light's application for the release of same under section 5 of the *Court Order Enforcement Act* is granted;
3. The sum of $741,539.47 be paid out of Court; and
4. Payment will be made payable to 7th Light Education Group Inc. and delivered to the Defendant's counsel of record herein.

[Emphasis added.]

It will be apparent to the reader that an order which on its face appears to both grant and dismiss a single application for payment out is problematic.

In the Court of Appeal

[10] RGN filed a notice of appeal on November 24, 2022 challenging the second term of the order. It argued that the judge erred by ordering the release of the garnished funds under s. 5 on the basis that they were subject to a *Quistclose* trust, when that issue had not been raised by either party.

[11] In its response factum, 7th Light agreed with the appellant that the judge erred in this respect. 7th Light realized that in order to support the judge's decision to order payment out, it would have to rely on its original arguments both with respect to s. 3 and s. 5 of the *Act*. Since the judge had "dismissed" 7th Light's application under s. 3, 7th Light decided it would have to cross-appeal that term of the order to "revive" that argument. It therefore applied for an extension of time to cross-appeal, which a judge in chambers granted on June 9, 2023. I note parenthetically that no one on that application considered whether a cross-appeal was actually required.

[12] 7th Light then filed its cross-appeal seeking to set aside the term of the order dismissing its application to set aside the garnishing order for failure to comply with s. 3 of the *Act*. However, when RGN applied for security for costs of the cross-appeal, Justice Grauer observed that the cross-appeal was wrongly conceived

because 7th Light did not seek to vary the judge's order and was only attempting to support it on different grounds.

[13] 7th Light then filed the present application seeking leave to amend its response factum to include the s. 3 argument on the condition that it discontinue its cross-appeal. In short, 7th Light proposes to argue in its response factum that the order that the monies be paid out of court was correct, but that it was ordered by the judge for the wrong reasons.

[14] RGN contends that, in seeking to amend its response factum, 7th Light is really trying to advance the substance of its cross-appeal—which it proposes to abandon. RGN says this is an abuse of process. It points out that it has only appealed the judge's second order requiring payment of the money out of court under s. 5 of the *Act*. RGN contends that if 7th Light wishes to put in issue the first order dismissing payment out under s. 3 of the *Act*, it must file its own cross-appeal.

Analysis

[15] I concluded at the end of the hearing that 7th Light had met the test for leave to file an amended factum: see *Red Chris Development Company Ltd. v. United Steelworkers, Local 1-1937*, 2020 BCCA 236 at para. 24. In short, it is in the interests of justice to grant leave in this case.

[16] The appellant's insistence on the respondent advancing its s. 3 argument as a cross-appeal is misplaced. All of this wrangling could have been avoided if the following well-settled principles had been brought to bear in the drafting of the order:

1. An order should only consist of the outcome of the hearing, not the reasons for that outcome;

2. An order should be expressed as actions to be taken or refrained from, identifying who is to act and what that person is to do; and

3. An order should not recite or include either arguments or reasons.

Authority for these principles can be found in a long line of jurisprudence including *Bishop of Victoria v. Victoria (City)*, 1933 CanLII 283, [1933] 4 D.L.R. 524 (B.C.C.A.); *Attorney General of B.C. v. Lindsay*, 2009 BCCA 159 at para. 12; *Knapp v. Town of Faro*, 2010 YKCA 7 at para. 6; *Warde v. Slatter Holdings Ltd.*, 2016 BCCA 63 at para. 53; *Law v. Cheng*, 2016 BCCA 120 at paras. 14–18.

[17] I recognize that the order filed by the parties echoed the judge's disposition, and acknowledge, with respect, that her articulation of the disposition caused confusion. Nonetheless, lawyers have a responsibility to draft enforceable orders. As I noted at the outset of these reasons, an order which both dismisses and grants an application is patently unsound.

[18] Applying the above principles to this case, the order should simply have directed that the sum of $741,539.47 be paid out of court to 7th Light. So drafted, it would have been evident that 7th Light is not required to cross-appeal to argue that order is correct and should be upheld.

[19] RGN's insistence on a cross-appeal to revive an alternative argument rejected by the hearing judge is also contrary to the limited scope of this Court's jurisdiction. This Court is a creature of statute. It has no inherent jurisdiction to hear appeals except those granted to it by statute. Section 13 of the *Court of Appeal Act*, S.B.C. 2021 c. 6, confers jurisdiction to hear an appeal from an order of the Supreme Court or of a judge of that court. It follows that this Court has no jurisdiction to hear an appeal from findings made in reasons for judgment. Those findings and reasons may of course be challenged on appeal, but always with the object of establishing an error sufficient to require the setting aside of the order made below: *Law* at paras. 19–21.

[20] It is for these reasons that I agreed with the respondent that a cross-appeal is not required, and that the application for leave to file an amended response factum should be granted with costs in the cause.

"The Honourable Madam Justice Fenlon"