IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Sumas Environmental Services Inc. v. St. Alcuin College for the Liberal Arts Society,* 2024 BCSC 1109

Date: 20240625
Docket: S240629
Registry: Vancouver

Between:

Sumas Environmental Services Inc.

Plaintiff

And

St. Alcuin College for the Liberal Arts Society

Defendant

Before: The Honourable Justice B. Smith

Reasons for Judgment

Counsel for the Plaintiff:	S. Javadi
Counsel for the Defendant:	J.X. Li
Place and Date of Hearing:	Vancouver, B.C. May 9, 2024
Place and Date of Judgment:	Vancouver, B.C. June 25, 2024

Introduction

[1] The defendant applies for declarations from the court that certain statements of fact in the plaintiff's Amended Notice of Civil Claim are an improper withdrawal of admissions, and that the defendant can rely on any statements of fact in the plaintiff's Notice of Civil Claim as admissions.

[2] The central issue is whether certain facts pleaded in the Notice of Civil Claim are properly characterized as admissions.

Background

[3] The plaintiff, Sumas Environmental Services Inc. ("Sumas"), is an environmental contracting company based in Burnaby. It provides water treatment and sediment control equipment, and related services, to construction sites.

[4] The defendant, St. Alcuin College for the Liberal Arts ("St. Alcuin"), is an independent school operating in North Vancouver. It is the registered owner of lands located at 300 Esplanade West in North Vancouver (the "Lands").

[5] On or about December 7, 2020, St. Alcuin entered into a joint venture agreement (the "JVA") with Montaigne Group Limited ("Montaigne"). The JVA was for the construction of a new school on the Lands (the "Project"). Montaigne is a property development company.

[6] In or around November 2020, Sumas agreed with another company, Lionsgate Excavation and Demolition Limited ("Lionsgate"), which was excavating the Lands, for Sumas to provide water treatment and sediment control services for the Project (the "Services"). The details of the apparent agreement between Sumas and Lionsgate are unclear.

[7] Starting in about December 2020, Sumas provided the Services. Until August 2021, Sumas invoiced Lionsgate for the Services, following which, at the request of Lionsgate, Sumas invoiced Montaigne, with the apparent agreement of Montaigne.

[8] Sumas says it finished providing the Services in June 2022.

[9] Sumas says Montaigne did not pay its outstanding invoices for the Services, but instead referred Sumas to St. Alcuin. Sumas says it requested St. Alcuin to pay, but St. Alcuin did not.

[10] I understand Sumas is not a party to the JVA and did not have a contract with St. Alcuin. Whether Sumas had a contract with Montaigne is disputed.

[11] The total amount at issue is approximately $4,100.

[12] On January 30, 2024, Sumas filed a Notice of Civil Claim against St. Alcuin and registered a certificate of pending litigation against the Lands.

[13] St. Alcuin did not file any Response to Civil Claim and has yet to do so. Instead, on March 26, 2024, St. Alcuin filed an application under Rules 9-5 and 9-6 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [*Rules*], to strike Sumas' pleadings as disclosing no reasonable claim and summary judgment dismissing its claim.

[14] Sumas filed an Application Response, in which it took the position that St. Alcuin did not have standing to bring the application for summary judgment, not having previously served a responding pleading as required by Rule 9-6(4).

[15] On April 11, 2024, Sumas filed and served on St. Alcuin an Amended Notice of Civil Claim. In the Amended Notice of Civil Claim, Sumas amended, among other things, the quantum of its claim, the basis for its certificate of pending litigation, and certain statements of fact concerning the nature of the relationship between Sumas, St. Alcuin and other service providers to the Lands.

[16] On April 15, 2024, St. Alcuin's application was before Justice Francis who declined to consider the issue now before the court, namely whether Sumas had improperly withdrawn admissions, because it was not part of St. Alcuin's Notice of Application. Justice Francis adjourned St. Alcuin's application and ordered St. Alcuin to file an amended application with respect to the issue of improper withdrawal of admissions.

[17] On April 24, 2024, St. Alcuin filed an Amended Notice of Application with respect to the issue of improper withdrawal of admissions and the Rule 9-5 application.

[18] On May 9, 2024, the matter was before me. Because of time limitations, I determined, with consent of the parties, that only the issue pertaining to the declarations sought would be dealt with, and St. Alcuin's application as it relates to relief under Rule 9-5 would be adjourned generally.

[19] I am not seized of the matter.

Position of the Parties

[20] In its Amended Notice of Application, St. Alcuin takes the position that Sumas' amendments are a withdrawal of admissions pursuant to Rule 7-7(5)(c) and ought not to be allowed. St. Alcuin says that the test for withdrawal of admissions has not been met, it has suffered prejudice and is entitled to special costs.

[21] Relying on Rule 6-1(1)(a), Sumas says that it is entitled to amend its pleadings and that the impugned amendment is not an admission. Sumas says that St. Alcuin's position is ill-conceived, that the law in British Columbia has consistently held that pleadings are not admissions, and amendments to pleadings are not withdrawal of admissions, even where inconsistent positions from those taken in the original pleadings are taken in the amended pleadings.

[22] Sumas says that St. Alcuin's application should be dismissed and seeks costs.

Legal Principles

[23] Rule 1-3 provides:

> **Object**
>
> (1) The object of these Supreme Court Civil Rules is to secure the just, speedy and inexpensive determination of every proceeding on its merits.

> **Proportionality**
>
> (2) Securing the just, speedy and inexpensive determination of a proceeding on its merits includes, so far as is practicable, conducting the proceeding in ways that are proportionate to
>
> > (a) the amount involved in the proceeding,
> >
> > (b) the importance of the issues in dispute, and
> >
> > (c) the complexity of the proceeding.

[24] Rule 6-1(1)(a) provides:

> **When pleadings may be amended**
>
> (1) Subject to Rules 6-2 (7) and (10) and 7-7 (5), a party may amend the whole or any part of a pleading filed by the party, other than to change parties or withdraw an admission,
>
> > (a) once without leave of the court, at any time before service of the notice of trial, …

[25] Rule 7-7(5)(c) provides:

> **Withdrawal of admission**
>
> (5) A party is not entitled to withdraw
>
> > […]
> >
> > (c) an admission made in a pleading, petition or response to petition
>
> except by consent or with leave of the court.

Discussion

[26] The first thing for me to determine is whether the impugned pleading is an admission within the meaning of the *Rules*.

[27] In *Ledinski v. Chestnut*, 2015 BCSC 373 [*Ledinski*], the court addressed the question of whether amendments to pleadings can amount to withdrawal of admissions and determined that pleadings are only admissions where they are directly and unambiguously made for the purposes of a deliberate and clear concession to the other party: *Ledinski* at paras. 27–28.

[28] In *Ledinski*, at paras. 19–20, the court discussed whether amendments to pleadings can amount to withdrawal of admissions:

[19] What constitutes an admission in pleadings was considered in *British Columbia Ferry Corp. v. T&N, plc,* [1993] B.C.J. No. 1827 (S.C.), where the court dealt with Rule 31(5)(c) of the former Rules, which was identical to present Rule 7-7(5)(c). The plaintiff in that case, an incorporated fleet of ferries, applied to amend its Statement of Claim to withdraw an allegation that the defendants had supplied allegedly harmful asbestos-containing material to the plaintiff and its agents. The defendants had demanded particulars, and the plaintiff had provided a list of those it said were its agents. The defendants pleaded, among other things, that the plaintiff was fixed with any knowledge its agents had of risks of asbestos, presumably prompting the plaintiff's desire to amend. The defendants opposed the amendment on the basis that the proposed amendment amounted to withdrawing an admission under Rule 31(5). At paras. 13 and 14, the court said the following:

> 13. The type of admission contemplated in the rule is an admission which would benefit the defendant in its defence of the case remaining after the amendment. Further, the admission contemplated by the rule must be a deliberate concession made by the plaintiff for the benefit of the defendant.
>
> 14. In that pleadings should contain statements of fact, in one sense every pleading is an admission where it contains a statement of fact. But that is not the type of admission contemplated by Rule 31(5). The rule contemplates an admission deliberately made by the party pleading it as a concession to its opponent. No particular form of words need be given but the concession must be clear.

[20] That remains the law in this province: see *Sommer v. Coast Capital Savings Credit Union*, 2013 BCSC 881 at para. 14. That case in turn cited *Kamei Sushi Japanese Restaurant Ltd. v. Epstein* (1996), 25 B.C.L.R. (3d) 366 (S.C.), where the court pointed out that when a statement of claim is filed, there are no facts in issue between the parties, saying this at para. 13:

> When the statement of claim was drafted and then filed February 12, 1993 it was intended to allege the facts giving rise to the cause of action. There were no facts in issue between the parties when the statement of claim was filed. It was not in response to any other pleading at the time it was filed and was not intended to be a deliberate concession for the benefit of the defendant. A plaintiff seeking to amend allegations of facts in its original statement of claim is in essence amending the factual foundation of its claim and thereby the nature of the claim in issue. If the new allegation of fact gives rise to a new claim which is statute barred or otherwise inappropriate the defendant can apply to strike such pleadings. However the amendment proposed is not an admission as that term is intended in Rule 31(5) and as interpreted by Braidwood J. in the *B.C. Ferry* case referred to. In my opinion the definition of "pleading" in Rule 1 including a statement of claim does not determine this issue because the context of Rule 31(5) requires otherwise.

[29] Courts have also relied on *Ledinski* for the proposition that an amendment to a pleading will not be caught within the ambit of Rule 7-7(5)(c) even where the amendment proposes to contradict original statements: *Cowichan Valley (Regional District) v. Cobble Hill Holdings Ltd.,* 2016 BCSC 489, citing *Kamei Sushi Japanese Restaurant Limited v. Epstein* (1996), 25 B.C.L.R. (3d) 366; *Elia Kirby Productions Ltd. v. 1007377 B.C. Ltd.*, 2017 BCSC 179; *Yi Teng Investment Inc. v. Keltic (Brighouse) Development Ltd.*, 2022 BCSC 33, aff'd in *Keltic (Brighouse Development Ltd. v. Yi Teng Investment Inc.,* 2023 BCCA 375.

[30] In *Mand v. Cheema*, 2023 BCSC 1388 [*Mand*], the court confirmed the law as stated in *Ledinski* that:

> [25] …Admissions are those concessions which are deliberately, clearly, and without any ambiguity made by a party, to limit the issues which are in conflict between the parties. Put colloquially, they remove an issue as between the parties. The admission results in a fact that is agreed to, and so no longer needs to be proven at trial. As a result, there is no need for the plaintiff to adduce evidence in support of the fact which is admitted, no need to produce documents related to the admission, and no need to examine the defendant on that issue at their examinations for discovery. …

[31] The court in *Mand* stated that the threshold question on an application to withdraw is whether there is a triable issue which should, in the interests of justice, be determined on its merits, rather than disposed by way of admission.

[32] St. Alcuin has not provided any persuasive or binding authority in support of its position that pleadings may be deemed to be admissions, or that amendments to pleadings are a withdrawal of admissions.

[33] St. Alcuin submits Sumas made an admission when it referenced having a contract with Montaigne in its Notice of Civil Claim. St. Alcuin submits questions involving improper withdrawal of admissions are not limited to responses to Notices of Civil Claim, and a Notice of Civil Claim might contain admissions if previous correspondence between counsel has already addressed statements of fact the plaintiff subsequently seeks to change or omit in an Amended Notice of Civil Claim.

St. Alcuin submits Sumas' reference to a contract with Montaigne was a concession to a statement of fact in correspondence between counsel.

[34] St. Alcuin submits that the pleaded existence of a contract between Sumas and Montaigne in Sumas' Notice of Civil Claim narrows the facts that need to be proved at trial, because St. Alcuin's defence relies on proof of the existence of the alleged contract.

[35] St. Alcuin submits that if a statement of fact in a pleading pertains to the "crux of the argument", which I take to mean a central issue in the case, a statement of fact by a plaintiff in a Notice of Civil Claim which is helpful to a defendant's ability to formulate its defence benefits the defendant. As I understand St. Alcuin's position, a central issue in this case is the existence or otherwise of a contract between Sumas and Montaigne.

[36] I find that none of Sumas' pleadings in its original Notice of Civil Claim were admissions made deliberately, clearly, and without ambiguity as a concession to St. Alcuin. The impugned pleadings are not admissions. Sumas' amendments to its Notice of Civil Claim are not withdrawals of admissions, but an amendment of the factual foundation of its claim.

[37] Accordingly, I decline to declare that certain statements of fact in the plaintiff's Amended Notice of Civil Claim are an improper withdrawal of admissions, and that the defendant can rely on any statements of fact in the plaintiff's Notice of Civil Claim as admissions.

[38] Even if the impugned changes were admissions, which they are not, I would have granted Sumas leave to withdraw them, because it is in the interests of justice that matters be determined on the merits. Rule 1-3 provides that the object of the *Rules* is to secure the just, speedy and inexpensive determination of every proceeding on its merits. Rule 7-7(5) gives the court discretion to grant leave for a party to withdraw an admission. The overriding principle governing such an application is whether, in the circumstances, the court is satisfied that it is in the

interests of justice to allow the admission to be withdrawn: *Lam v. University of British Columbia*, 2012 BCSC 670 at para. 33, citing *Norlympia Seafoods Ltd. v. Dale & Co*. (1982), 141 D.L.R. (3d) 733 (B.C.C.A.).

[39] In reaching this determination, I am mindful of the factors to be considered on an application to withdraw an admission set out in *Munster & Sons Developments Ltd. v. Shaw*, 2005 BCCA 564. Concerning those factors, I note in particular that the test is whether there is a triable issue which, in the interests of justice, should be determined on the merits and not disposed of by an admission of fact.

[40] Here Sumas asserts it provided the Services to and for the material improvement of the Lands. There is a triable issue which, in the interests of justice, should be determined on the merits and not disposed of by an admission of fact, namely, whether there was a contract between Sumas and Montaigne. If St. Alcuin believes another entity should pay, it can bring a third-party claim against that entity. St. Alcuin cannot summarily avoid the triable issue by arguing that it no longer exists because it has been concluded in pleadings.

Conclusion

[41] St. Alcuin's application is dismissed.

Costs

[42] Sumas is entitled to its costs.

"B. Smith J."

B. SMITH J.