IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Grewal v. Gill,*
2024 BCSC 1087

Date: 20240510
Docket: S252726
Registry: New Westminster

Between:

Amritpal Singh Grewal and Sarabha Transport Ltd.

Plaintiffs

And:

Manjit Kaur Gill

Defendant

Before: The Honourable Justice Lamb

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiffs:	D. Gautam
Counsel for the Defendant:	G.B. Brandt J.S. Andrews
Place and Date of Hearing:	New Westminster, B.C. May 6, 2024
Place and Date of Judgment:	New Westminster, B.C. May 10, 2024

[1] **THE COURT:**

Introduction

[2] This is a commercial tenancy dispute that relates to a property at 21368 - 64th Avenue in Langley, British Columbia. The defendant owns the property. Since February 2021, the plaintiff Amritpal Grewal has occupied part of the property. I will refer to the part of the property occupied by the plaintiffs as "the premises." Since April 2021, Mr. Grewal has operated a truck-driving school at the premises through his company, the plaintiff Sarabha Transport Ltd. The terms of the plaintiff's tenancy of the premises are in dispute.

[3] Mr. Grewal says the plaintiff's tenancy is governed by a written leased dated February 6, 2021, with a term that expires February 28, 2030. The defendant, Manjit Gill, disputes the authenticity of the February 2021 lease and specifically denies signing it. Ms. Gill says that the only written lease between the parties was dated May 1, 2021. Ms. Gill says the May 2021 lease expressly provided the tenancy was month to month, and the May 2021 lease expired in October 2021. Ms. Gill says the plaintiff's tenancy continued month to month after October 2021, with rent payable pursuant to an oral agreement between the parties. Mr. Grewal disputes the authenticity of the May 2021 lease and specifically denies signing it. Mr. Grewal denies there was an oral agreement between the parties for rent payable.

[4] Ms. Gill served a notice to quit and demand for possession to counsel for the plaintiffs on March 4, 2024. The plaintiffs obtained an injunction by consent, renewed once by consent, which allowed them to remain on the premises until May 6, 2024. The plaintiffs now apply for an interlocutory injunction that would allow them to stay on the premises and an order allowing the plaintiffs to continue operating the driving school "without interference" until trial or settlement of this action. I extended the existing injunction until today pending my decision.

[5] The key issue I must decide is whether the plaintiffs have established that it would be just and equitable in all the circumstances to grant an interlocutory injunction in this case. In deciding that issue, I must consider whether an order

allowing the plaintiffs to continue operating the driving school at the premises is an order made against the defendant, as suggested by the plaintiffs, or whether such an order would ostensibly have an effect beyond this litigation.

[6] I will briefly review the legal framework that applies before turning to the analysis. I have reviewed all the evidence tendered on this application, but I will only refer to the evidence to the extent necessary for the analysis of the issues I must decide. I will not review the history of the litigation and all of the events leading up to the litigation other than to note that the defendant recently filed a petition seeking a writ of possession pursuant to ss. 18 to 21 of the *Commercial Tenancy Act,* R.S.B.C. 1996, c. 57 and intends to seek consolidation of the petition with this action.

Legal Framework

[7] Section 39(1) of the *Law and Equity Act,* R.S.B.C. 1996, c. 253 provides that an injunction may be granted by interlocutory order in all cases in which it appears to the court to be just and convenient that the order should be made. The onus is on the applicant to show that it would be just and convenient to grant an injunction.

[8] At para. 37 of *Vancouver Aquarium Marine Science Centre v. Charbonneau*, 2017 BCCA 395 [*Vancouver Aquarium*], our Court of Appeal summarized the well-known test for issuing an injunction from *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 at 334, 1994 CanLII 117 (SCC) [*RJR*], as follows:

> Before issuing an interlocutory injunction, there must be a preliminary assessment of the merits of the case to ascertain that there is i) a serious question to be tried, ii) a consideration of whether the applicant will suffer irreparable harm if the application were dismissed, and finally, iii) an assessment of the "balance of convenience", that is, which of the parties would suffer the greater harm from the granting or refusing the injunction pending a decision on the merits of the case. As noted in *Google Inc.* at para. 25, the fundamental question is whether the granting of an injunction is just and equitable in all of the circumstances of the case.

[9] The three factors are not watertight compartments. The ultimate focus is on the justice and equity of the situation.

[10] In seeking an equitable remedy, the plaintiffs must come to the court with clean hands. Our Court of Appeal explained this concept at para. 63 of *International Forest Products Ltd. v. Kern*, 2000 BCSC 888:

> [63] The granting of an interlocutory injunction is the granting of an equitable remedy. A fundamental principle of equity is that he who seeks equity must come with clean hands. The principle requires the applicant seeking relief to be in a position where his or her assertions to the court are candid, truthful and in no way misleading. In addition, the principle requires the applicant's conduct to be unassailable. Conduct of the applicant which is questionable might disentitle him or her to the relief sought.

Analysis

[11] Turning to the analysis, I will now review the *RJR* factors and consider Ms. Gill's submission that the plaintiffs are not entitled to equitable relief as they have not come to court with clean hands.

Is there a serious question to be tried?

[12] The threshold for serious question to be tried is a low one. As the Supreme Court of Canada said in *RJR*, "a prolonged examination of the merits is generally neither necessary nor desirable" unless an injunction would in effect amount to a final determination of the action, which is not the case here. Although the threshold is low, I must be satisfied that the plaintiff's claim is not frivolous or vexatious.

[13] The question to be tried is determined by the pleadings. In the notice of civil claim the plaintiffs seek the following relief:

a) a declaration that the February 2021 lease is valid and binding and in full force and effect;

b) an order setting aside the notice to quit and notice of possession dated March 4, 2024;

c) a permanent injunction restraining the landlord from interfering with the quiet and peaceful enjoyment of the property by the plaintiffs during the term of the lease and any extensions thereafter; and

d) punitive and aggravated damages.

[14] I am satisfied the plaintiff's claim seeking to confirm the validity of the February 2021 lease is not frivolous or vexatious. In support of that claim, Mr. Grewal has produced a document dated February 6, 2021, reportedly prepared and signed by the defendant. Mr. Grewal's wife has sworn an affidavit deposing that she witnessed Mr. Grewal's and Ms. Gill's signatures on the February 2021 lease. Another witness's signature appears on the document. According to Mr. Grewal and his wife, that witness was at their home when Ms. Gill brought the lease over to be signed. The plaintiffs have provided some evidence on which a court could find the February 2021 lease to be valid.

[15] Ms. Gill says there is no credible argument to support the authenticity of the February 2021 lease because its contents are wholly refuted by the parties' conduct and dealings from and after the date the lease was allegedly signed. Ms. Gill says that a text message from Mr. Grewal to Ms. Gill on February 6, 2021, is consistent with her account that she agreed to allow Mr. Grewal to park his truck on the premises that night when he had nowhere else to park it. She says she agreed to let him park his truck on the premises on a month-to-month basis either during that first conversation or shortly thereafter. I note that a transfer document produced by Mr. Grewal suggests that he purchased his third truck on February 6, 2021.

[16] Ms. Gill says that she and Mr. Grewal entered the only written lease in May 2021 when she became concerned that he was doing more than parking a truck on the premises. Ms. Gill says the parties' conduct after February 2021 was consistent with the terms of the February 2021 lease, including the fact Mr. Grewal paid higher rent than the actual amount indicated in the lease. There are other examples of conduct consistent with the February 2021 lease. Mr. Grewal provided his explanation for some of these apparent inconsistencies but not all of them.

[17] Ms. Gill argues that the February 2021 lease makes no commercial sense based on the low rent and lengthy term. She says that she had other plans for the premises occupied by Mr. Grewal. Ms. Gill's position that the February 2021 lease is not valid appears strong based on the post-February 2021 conduct, particularly the

rent paid by Mr. Grewal and the fact that Ms. Gill did not allow him to sublet part of the premises to a third party, which the February 2021 lease would permit. However, whether the defendant's case is strong is not the test on the first *RJR* factor.

[18] If the February 2021 lease is valid, then it is arguable that the notice to quit and notice of possession dated March 4, 2024, are not valid. Whether Mr. Grewal is in breach of the February 2021 lease is a triable issue. Even if the February 2021 lease is said to include an implied term that Mr. Grewal must only use the property in compliance with local bylaws, there is no suggestion he was given an opportunity to take steps to comply before the notices were issued. Further, Mr. Grewal suggests that Ms. Gill was well aware of his intended and actual use of the premises, which may raise a question of waiver of any breach. Whether Mr. Grewal may rely on waiver goes beyond the analysis of the merits of the action required for the purposes of the first *RJR* factor.

[19] In summary, at this stage of the proceeding, I accept that the plaintiff's claim is not frivolous or vexatious based on the February 2021 lease that the plaintiffs have produced and the evidence from Mr. Grewal and his wife that Ms. Gill signed it. Even if I am of the view that the plaintiff is unlikely to succeed at trial, the analysis should continue to the second and third *RJR* factors.

Will the plaintiffs suffer irreparable harm if the injunction is not granted?

[20] The plaintiffs say they will suffer irreparable harm in the form of damage to their business reputation and loss of customers if the injunction is not granted. This second *RJR* factor requires close consideration of the orders sought by the plaintiffs on this injunction application because the irreparable harm alleged by the plaintiffs would be avoided only if they are permitted to stay on the premises and they are allowed to continue operating the driving school there.

[21] In this case, I am not satisfied that the plaintiffs have provided an evidentiary foundation sufficient to show irreparable harm. Further, I am not satisfied that an injunction allowing the plaintiffs to retain possession of the premises would avoid the negative impact on their business that they identify because they have failed to

demonstrate that the trucking business would meet the regulatory requirements needed to continue operating at the premises.

[22] The Supreme Court of Canada explained irreparable harm at 341 of *RJR*:

> "Irreparable" refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other. Examples of the former include instances where one party will be put out of business by the court's decision (*R.L. Crain Inc. v. Hendry* (1988), 1988 CanLII 5042 (SK KB), 48 D.L.R. (4th) 228 (Sask. Q.B.)); where one party will suffer permanent market loss or irrevocable damage to its business reputation (*American Cyanamid, supra*); or where a permanent loss of natural resources will be the result when a challenged activity is not enjoined (*MacMillan Bloedel Ltd. v. Mullin*, 1985 CanLII 154 (BC CA), [1985] 3 W.W.R. 577 (B.C.C.A.)).

[23] Given that an interlocutory injunction is a significant pre-trial remedy, there must be an evidentiary foundation beyond mere speculation that irreparable harm will result: *Vancouver Aquarium* at para. 60.

[24] Further, “the evidence must support that the harm is generated by that which is sought to be prohibited by the injunction” [Emphasis added.]: *Vancouver Aquarium* at para. 66. In other words, the evidence must support a finding that the irreparable harm will be avoided if the injunction is granted, which makes sense: if an injunction will not avert the irreparable harm, then such a powerful pre-trial remedy should not be granted.

[25] In terms of harm, Mr. Grewal deposed in his first affidavit made March 5, 2024, that the actions of the landlord were interfering with his ability to operate the driving school from the premises. He said various encounters at the premises with "random" individuals that Mr. Grewal believed were dispatched by Ms. Gill affected his reputation because students were questioning whether he would be able to continue the driving school. If an injunction were granted prohibiting Ms. Gill "from interfering in any way whatsoever" with the plaintiff's possession and quiet enjoyment, this would presumably end the questions from students arising from the visits of random individuals. However, evidence of questions from students does not substantiate irreparable harm.

[26] In his second affidavit made April 22, 2024, Mr. Grewal recounts visits to the premise by various regulatory agencies, the RCMP, and ICBC inspectors, which Mr. Grewal believes were instigated by Ms. Gill. She also reports that the security guard hired by Ms. Gill continued to interfere with his peaceful occupation of the premises by taking photographs and videos. Mr. Grewal deposed that the landlord's actions were interfering with his ability to operate his business from the premises. Granting an injunction allowing the plaintiffs to stay on the premises will not preclude regulatory agencies from visiting the premises and conducting inquiries.

[27] In terms of evidence that might show irreparable harm if an injunction is not granted, Mr. Grewal says the following:

a) The students attend the Sarabha Driving School based on word of mouth from other students, and as such "our reputation is very dear and important to us";

b) There is growing concern among their students since the landlord started creating the issues identified;

c) The plaintiffs have made the premises fit for their purpose of parking trucks and operating a driving school, and if Mr. Grewal is forced out of the premises, it will result in the shutting down of his driving school;

d) The geographical location of the premises is "unique" and suitable to the plaintiff's business. The premises are located at Highway 10, which is a major arterial road that connects Surrey, Langley, and Abbotsford;

e) The location of the premises allows the plaintiffs to attract students from each of these cities;

f) Mr. Grewal believes that ICBC agreed to do part of the Class 1 licensing test at the premises because of its close proximity to the ICBC licensing office and because of the suitability of the premises; and

g) "The loss of our students and business reputation cannot be quantified in terms of money."

[28] In my view, the plaintiffs have failed to provide a sufficient evidentiary foundation to show that the harm "could not be remedied if the eventual decision on the merits does not accord with the results of the interlocutory application": *RJR* at 341. Mr. Grewal asserts that if the plaintiffs are forced out of the premises, then this will result in shutting down the driving school. However, Mr. Grewal does not identify any efforts he had made to find an alternate business location and why it would not be possible to move the driving school. I recognize that Mr. Grewal has spent money to make the premises suitable by paving, bringing in gravel, and moving portable buildings onto the site, and I anticipate that the plaintiffs would incur costs if required to leave the premises, but such costs incurred and thrown away would be measurable and could be compensated by damages. Evidence such costs would be incurred does not establish that the plaintiff's driving school could not operate at another location.

[29] Mr. Grewal asserts that the premises are "unique" because of its location, but there are no details provided regarding why the survival of the driving school depends on being at that specific location. Mr. Grewal does not explain why being on a major arterial road or at that intersection in particular is critical to operating his driving school. He says that the location enables the driving school to attract students from neighbouring municipalities, but there are no details provided that would assist the court in assessing why Mr. Grewal says the driving school must close if not permitted to operate at the premises. He says three potential students have decided not to enroll because of the ongoing issues with the landlord, but those issues would be avoided if the plaintiffs left the premises and set up business elsewhere. Mr. Grewal's evidence based on *his* belief about ICBC's conduct is not sufficient, and the business advantage or necessity (if any) of having ICBC test on site is not explained.

[30] The plaintiffs provided evidence that five other driving schools operate in the Township of Langley, one of which is close to the premises. This evidence suggests

that four other driving schools operate somewhere else, which suggests that premises on Highway 10 is not a prerequisite to operating a driving school.

[31] Mr. Grewal's bare assertion that "the loss of our students and business reputation cannot be quantified in terms of money" is not sufficient.

[32] Even if the evidence of harm is considered cumulatively, I am not satisfied that there is an evidentiary foundation to show irreparable harm. There may be costs and loss of some students, but the plaintiffs have failed to provide an evidentiary foundation to show that the business must close if an injunction permitting it to stay at the premises is not granted.

[33] Even if an injunction is granted permitting the plaintiffs to stay on the premises, they have failed to demonstrate that they will avoid damage to their business reputation and loss of students. In particular, the plaintiffs have failed to show that they will be able to secure the regulatory approvals needed to continue operating the trucking school at the premises, including a business licence and a licence from ICBC.

[34] The plaintiffs have failed to provide evidence that they qualify for or would be issued a business licence. It is common ground that the premises are located in the agricultural land reserve within the Township of Langley, and the plaintiffs must have a business licence from the township to continue operating at the premises. The plaintiffs' most recent business licence from the Township expired May 3, 2024. The plaintiffs have failed to show that the Township would renew their business licence or that the plaintiffs would qualify for a business licence.

[35] Because the premises are in the Agricultural Land Reserve (“ALR”) only specific business activities are permitted at the premises, defined by the zoning bylaw as an "accessory home occupation": Township of Langley Zoning Bylaw 1987 No. 2500. An "accessory home occupation" means an occupation, profession, or hobby craft *which is incidental and subordinate to the use of a dwelling for residential purposes* and which does not change the residential character of the dwelling or the neighbourhood where it is located. The owner of an accessory home

occupation "shall live in the same dwelling as an accessory home occupation": Township of Langley Zoning Bylaw 1987 No. 2500, s. 104.3(b). There is no evidence before me that there is a residential dwelling on the premises occupied by the plaintiffs. There is no evidence before me that Mr. Grewal lives in a residential dwelling on the premises. When asked by the court whether there was such evidence, Mr. Grewal's counsel said there was no evidence that Mr. Grewal is not residing on the premises. In my view, this is far from the "candid, truthful, and in no way misleading" assertions expected from a party seeking equitable relief. As mentioned, I recognize that the Township did issue a business licence to Sarabha Driving School, the most recent of which expired recently. However, it is not clear what information Mr. Grewal provided to the Township when he first applied for a business licence in November 2021 in answer to the Township's request for "proof that 2146 - 64th Avenue is your permanent residence."

[36] Mr. Grewal deposed that two other driving schools in the Township of Langley operate from properties in the ALR. However, Mr. Grewal does not say whether or not those businesses comply with the residence requirement in the bylaw. I am not prepared to conclude that those other schools are operating in contravention of the bylaw.

[37] In addition to a business licence, Sarabha Transport Ltd. doing business as Sarabha Driving School has a driver-training school licence issued by ICBC. On March 19, 2024, the senior manager of driver licensing integrity and oversight at ICBC wrote to Sarabha Driving School to advise that ICBC had some concerns over the use of the premises, and in particular whether such use complied with land-use regulations based on its location in the ALR and washroom facilities installed by the plaintiffs that were non-compliant with health and sanitation regulations. ICBC said it was considering terminating Sarabha's mandatory entry level training (“MELT”) agreement, which requires compliance with all applicable statutes and regulations, including municipal bylaws. It is not clear to me on the evidence whether a MELT agreement is required to operate a driving school, but the plaintiffs were keen not to have the MELT agreement cancelled, and their counsel responded to ICBC's letter promptly. On March 21, 2024, ICBC advised that the letter from plaintiff's counsel

satisfactorily addressed both concerns identified by ICBC, and ICBC was no longer considering terminating Sarabha's MELT agreement. Despite repeated requests from defendant's counsel, Mr. Grewal's counsel has not disclosed the letter sent to ICBC that effectively assuaged their concerns about ALR compliance. In his reply affidavit, Mr. Grewal deposed that he understood ICBC withdrew its proposal to terminate Sarabha's MELT agreement “after my lawyer satisfied them that we are not in violation of the land-use regulations under ALR and have decommissioned the toilet.” This evidence fails to reveal the representations the plaintiffs made to ICBC regarding ALR compliance. This is a second example of the plaintiff's lack of transparency.

[38] The regulatory challenges lead to consideration of the second order sought by the plaintiffs on this application, i.e. “an order allowing the plaintiffs to continue operating its operation on the premises without interference until this action is decided or settled”. I decline to grant the second order sought as I am not satisfied that I have the authority to make such an order, and I find it would not be in the public interest to do so. The order is not framed as an injunction that requires the defendant to do or refrain from doing something, which is an order that I have the discretionary authority to make. Instead, an order allowing the plaintiffs to continue operating the school at the premises could potentially be construed as interfering with or attempting to supersede the authority of the Township of Langley to require a business licence or of ICBC to terminate the plaintiff's driving school licence or to limit the scope of the authority of any other regulator or official to require the plaintiffs to comply with laws and regulations.

[39] The plaintiffs have provided no basis for the court's jurisdiction to make such an order, and I decline to make an order that could be misconstrued as providing immunity to the plaintiffs from regulatory authority or other valid limitations on their entitlement to carry on business at the premises. An order that would ostensibly or in fact permit the plaintiffs to operate their business without regulatory oversight would be against public policy.

Does the balance of convenience favour granting an injunction?

[40] The third *RJR* factor requires the court to consider which party would suffer greater harm from the granting or refusal to grant the interlocutory injunction. The plaintiffs do not recognize any harm to Ms. Gill if the interim injunction is granted and repeat that they will suffer harm and prejudice to their business if the injunction is not granted. I am satisfied that Ms. Gill faces the risk of regulatory penalties as owner of the premises and will not be able to use the remainder of the property as she wishes if the injunction is granted. The lack of adequate security for damages for Ms. Gill's losses and the strength of her defence to the plaintiffs' claims favour refusing an injunction.

[41] In *Canadian Broadcasting Corp. v. CKPG Television Ltd.*, 1992 CanLII 560 (B.C.C.A.), Lambert J.A. listed factors to be considered at the third stage of the *RJR* test, including:

> ... the adequacy of damages as a remedy for the applicant if the injunction is not granted, and for the respondent if an injunction is granted; the likelihood that if damages are finally awarded they will be paid; the preservation of contested property; other factors affecting whether harm from the granting or refusal of the injunction would be irreparable; which of the parties has acted to alter the balance of their relationship and so affect the status quo; the strength of the applicant's case; any factors affecting the public interest; and any other factors affecting the balance of justice and convenience.

[42] I have already commented on the adequacy of damages as a remedy to the plaintiffs. I have evidence regarding the most recent value of the property at 21368 - 64th Avenue assessed by BC Assessment, but I do not have any evidence regarding the current amount of any outstanding mortgage. The plaintiffs have provided evidence that suggests they will incur some costs and potentially lose some clients if the injunction is not granted. The evidence provided does not allow an assessment of those potential costs and losses. Mr. Grewal estimates that he has invested close to $100,000 to make the premises suitable for his business, but the invoices he attaches to his affidavit fall far short of $100,000, and a number of them appear to be monthly operating expenses, for example for portable toilets, rather than a capital investment in the property. There is no information about the plaintiffs' current or anticipated earnings or potential losses that might arise if the

injunction is not granted. In short, the potential range of damages the plaintiffs may suffer is unknown, and the defendant's ability to satisfy such damages is unclear.

[43] If the injunction is granted and Mr. Grewal retains possession of the premises, then Ms. Gill as owner is at risk of regulatory sanction from the Township of Langley, if the plaintiffs operate a business without a business licence, for example, or from Fraser Health Authority if the plaintiffs recommission a septic holding tank the plaintiffs installed at the premises without a permit and without permission from Ms. Gill. Given the notices received by Ms. Gill regarding the plaintiff's activities on the premises, the risk of regulatory sanction is real in my view.

[44] The plaintiffs have failed to adduce any evidence that it has the financial means to satisfy an undertaking as to damages. Mr. Grewal offered an undertaking as to damages when he sought the first interlocutory injunction, which was granted by consent. Mr. Grewal has not repeated that offer on this application. More significantly, he has provided no evidence that he could pay any fine issued by Fraser Health Authority, for example, or compensate Ms. Gill for any new damage to the premises. This is not necessarily fatal to the plaintiffs' application, but it militates against granting an injunction: *526901 BC Ltd. v. Dairy Queen Canada Inc.*, 2018 BCSC 1092 at para 59.

[45] In terms of inconvenience to the defendant, Ms. Gill planned for her daughter and her daughter's family to move into the house located on the part of the property at 21368 - 64th Avenue not occupied by the plaintiffs. I accept that Ms. Gill's daughter is worried about her safety if she moves into the house given the dispute between the parties. Ms. Gill and her husband are currently living in the house on the property while their daughter occupies the house they were planning to live in. This inconvenience does not weigh strongly in the balance.

[46] The strength of the parties' positions does factor into the balancing of convenience. As indicated, at this stage of the proceeding, based on the evidence tendered on this application, the plaintiffs' claim appears to be weaker than the defendant's defence to that claim.

[47] The plaintiffs' failure to be forthright regarding their compliance with the Township of Langley's zoning bylaw and representations regarding compliance to the Township and ICBC is a factor that weighs against granting an injunction.

[48] Taking all of these factors into account, including balancing the first two *RJR* factors, I am satisfied the balance of convenience weighs against granting an injunction in this case.

Conclusion

[49] Returning to the overall assessment of what is just and equitable in the circumstances, I am not prepared to exercise my discretion to grant an injunction that would give the plaintiffs the right to possess the premises. As for the order allowing the plaintiffs to continue operating the driving school, I am not satisfied I have the jurisdiction to order *in rem* that the plaintiffs be allowed to continue operating the driving school without interference. If I am wrong and I do have authority to make such an order, there is no reason to do so without ordering an injunction allowing the plaintiffs to retain possession of the premises, which I have declined to do.

[50] The plaintiffs’ application is dismissed.

[51] The defendant is entitled to costs in the cause. Those are my reasons.

“Lamb J.”