

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Stein v. Ratushny*,
2024 BCSC 1322

Date: 20240723
Docket: S234786
Registry: Vancouver

Between:

Cheryl Ann Stein

Plaintiff

And

**Rany Ratushny, Sylton Holding Management Company Ltd., Pacific Asset
Management Corporation (PAMC), Rebecca (“Becky”) Hachey Lund, Michael
Henderson, Adree Grandison, John Doe and Jane Doe**

Defendants

Before: The Honourable Justice E. McDonald

Reasons for Judgment

The Plaintiff, appearing in person:

C. Stein

Counsel for the Defendants:

A.L. Doolittle
F. Radan

Place and Date of Trial/Hearing:

Vancouver, B.C.
May 8, 2024

Place and Date of Judgment:

Vancouver, B.C.
July 23, 2024

Table of Contents

INTRODUCTION 3
ISSUE 3
BACKGROUND..... 3
ANALYSIS..... 6
 Should the Claim be struck because it is an abuse of process?..... 6
 Should the Claim be struck because it is doomed to fail, scandalous/frivolous or vexatious, or it may prejudice, embarrass or delay a fair hearing?..... 8

Introduction

[1] The plaintiff, who is self-represented, alleges that she sustained damage and loss as a result of, among other things, the defendants wrongfully denying her access to her rental apartment in the summer of 2021. In her amended notice of civil claim filed on November 17, 2023 (the “Claim”), the plaintiff sets out facts that she says took place in 2021 and 2022.

[2] In the Claim, the plaintiff seeks damages from the defendants for, among other things, personal injury, breach of privacy, negligence and emotional distress. The plaintiff specifically pleads that her Claim excludes issues raised in, or dealt with by, the Residential Tenancy Branch (“RTB”).

[3] The defendants apply to strike out the plaintiff’s Claim, without leave to amend, alleging that the Claim is prolix, doomed to fail and that it duplicates proceedings in the RTB.

[4] For the reasons that follow, I order that the plaintiff shall have an opportunity to further amend the Claim to, for example, plead defamation.

Issue

[5] The sole issue is whether the court should strike the Claim pursuant to Rule 9-5(1)(a), (b) and (c) of the *Supreme Court Civil Rules*.

Background

[6] On July 5, 2023, the plaintiff filed the notice of civil claim and then filed an amended version on November 17, 2023. The matters at issue in the Claim relate to the parties’ tenant-landlord relationship and certain events that took place in 2021 and 2022 related to the plaintiff’s tenancy and her access to the rental unit after the plaintiff was hospitalized.

[7] In the amended version, the plaintiff pleads that the Claim is intended to protect her right to claim for emotional distress, personal injury, “etc.”. The amended

version also states that the Claim has nothing to do with other proceedings in the RTB, such as the December 23, 2021 Decision in the plaintiff's favour.

[8] The Claim pleads that due to the plaintiff becoming ill and hospitalized in the summer of 2021, the landlord illegally locked her out of her apartment until October 6, 2021, which caused her emotional distress. It also pleads that on August 23, 2021, Mr. Ratushny sent a defamatory email about her to all tenants of the building. In para. 13 of the Claim it states:

13. ... Rany & landlord defamed Ms. Stein and gave out personal information to all in the building concerning her – it threatened her safety and her well being and was against the law. The note read in part, to “call the police” if they see Ms. Stein on the property and to “not let her in”... among other horrible things, one calling her a threat.

[9] The Claim states that the plaintiff did not learn of the defamatory email until December 10, 2021 when the email was included as part of the landlord's material at the RTB.

[10] The RTB has assigned various dispute numbers to applications filed by the parties in the RTB related to the disputed incidents in 2021 and 2022, including:

- a) Dispute No. 310046718 – the landlord's application for dispute resolution seeking an order for possession alleging the plaintiff had given effective notice to end tenancy.
- b) Dispute No. 310049160 – the landlord's application for dispute resolution seeking a monetary order for unpaid rent.
- c) Dispute No. 310050815 – the plaintiff's application for dispute resolution seeking to cancel the landlord's notice to end tenancy for non-payment of rent. On December 21, 2021, the RTB heard Dispute Nos. 310046718, 310049160 and 310050815, dismissing the landlords' application for possession, granting the plaintiff's application to cancel the notice to end tenancy and ordering the plaintiff to pay \$3,500 in unpaid rent.

- d) Dispute No. 310071295 – the plaintiff’s application for dispute resolution seeking a \$7,000 monetary award from the landlord for damage and \$2,000 for rent reduction due to her inability to access the unit in 2021. In a February 28, 2023 Decision under Dispute No. 310071295, the RTB orders the parties to comply with a voluntary settlement of the plaintiff’s rent reduction claim (which involved the landlord paying \$1,000 directly to the organization that pays the plaintiff’s rent) and it dismissed the plaintiff’s application for a \$7,000 monetary award, with leave to reapply. The February 28, 2023 Decision states that the terms of the settlement include the plaintiff agreeing that “this settlement agreement constitutes a final and binding resolution of her application, regarding her past rent reduction claim of \$2,000 only”.

- e) Dispute No. 310091279 – the plaintiff’s application for dispute resolution seeking a monetary award from the landlord for damages and loss due to the 2021 interactions and rent reductions for the periods when the plaintiff could not access the rental unit. On August 17, 2023, the RTB declined jurisdiction over Dispute No. 310091279 due to the plaintiff filing the Claim in this court on July 5, 2023.

- f) Dispute No. 910126531 - the plaintiff’s application for dispute resolution seeking a monetary award from the landlord for damages and loss due to the 2021 interactions related to inability to access mail and keys to the rental unit. Dispute No. 910126531 is set for hearing in 2024.

(collectively referred to as the “RTB Disputes re 2021 Interactions”)

[11] The defendants submit that the landlord and the plaintiff settled the plaintiff’s claim for rent reduction and, as part of the settlement, the plaintiff agreed that it “constituted a complete resolution and final settlement of all aspects of her past rent reduction claim”.

[12] On August 17, 2023, the RTB declined jurisdiction over the plaintiff’s notice of dispute no. 310091279 on the basis that she had commenced the Claim and

because this court had not ordered the director of the RTB to hear and determine the dispute.

[13] In the fall of 2023, the plaintiff filed other applications with the RTB that the defendants acknowledge are unrelated to the RTB Disputes re 2021 Interactions. On December 15, 2023, the RTB dismissed these applications.

[14] The plaintiff has also been involved in other proceedings in this court against different parties, including proceedings where the plaintiff has made unsuccessful claims against the parties' lawyers. Another different action of the plaintiff was struck out and the plaintiff was barred from commencing further proceedings against those parties. The defendants submit that this background, including that the plaintiff has not paid costs in those other proceedings, informs the present application and specifically, a request the plaintiff be precluded from bringing further actions naming the present defendants.

Analysis

Should the Claim be struck because it is an abuse of process?

[15] The defendants submit the Claim should be struck as an abuse of process under Rule 9-5(1)(d).

[16] The court has determined that it is an abuse of process to use a civil action to challenge the decision of an administrative body that is otherwise subject to review: *Fox v. Scott Safety Supply Services Inc.*, 2021 BCSC 842 [Fox]. In *Fox*, at para. 23, Justice Murray found that since matters raised by a civil claim had been finally decided by the Workers Compensation Board ("WCB") and the decisions could be appealed under the *Workers Compensation Act* or judicially reviewed, it was appropriate to strike the claim. This was despite the plaintiff's submission that the civil claim was for wrongful dismissal and that it was not an attempt to relitigate issues raised with the WCB.

[17] In para. 32 of their application, the defendants submit that the Claim is an abuse of process:

32. The Claim is an abuse of the Court's process because it is duplicative of and a collateral attack on previous and ongoing proceedings before the RTB, which has jurisdiction over the issues raised in the Claim. In particular, the allegations concerning the 2021 Interactions, including that the Defendants (or any of them) changed the locks and that the Plaintiff did not have access to the rental unit which resulted in the death of her cat, homelessness, mental and physical deterioration, and emotional suffering, have all either:

- a. been adjudicated by the RTB (i.e., the rent reduction for the period when the Plaintiff was allegedly unable to access her rental unit);
- b. are currently before the RTB (i.e., the allegations that the 2021 Interactions caused damage flowing from the Plaintiff's alleged homelessness, physical illness, deterioration of her mental health, traumatic experiences, emotional suffering and inability to obtain replacement keys); or
- c. are properly within the jurisdiction of the RTB (i.e., allegations that the Defendants or any of them, accessed the Plaintiff's rental unit or otherwise breached the tenancy agreement).

[18] The defendants further submit that since the Claim does not seek to reverse, vary or nullify an RTB hearing or an order by the RTB, the Claim may not be heard by this court. The defendants submit that this court may, and should, order that the issues in the Claim be disposed of by the RTB: *Residential Tenancy Act*, S.B.C. 2002, c. 78, s. 59 [RTA].

[19] I note that in her responding submissions, the plaintiff states that she wishes to have her Claim adjudicated in this court and she opposes the defendants' suggestion that the court should order the director of the RTB to hear and determine the dispute.

[20] In my view, based on the Claim as currently pled, and based on the evidence admissible on an application under Rule 9-5(1)(d), it is not clearly a collateral attack on orders of the RTB or duplicative of a proceeding in the RTB. I reach this conclusion because, for example, the Claim includes facts concerning an allegedly defamatory email from Mr. Ratushny to the other tenants about the plaintiff.

[21] While the defendants say that the plaintiff could seek a monetary award for this allegedly defamatory email as part of her claim for damage and loss, I do not agree that the Claim, as currently pled, represents a collateral attack on an RTB

order or that it clearly duplicates a proceeding in the RTB. I therefore decline to strike the Claim as an abuse of process pursuant to Rule 9-5(1)(d).

Should the Claim be struck because it is doomed to fail, scandalous/frivolous or vexatious, or it may prejudice, embarrass or delay a fair hearing?

[22] In the alternative, the defendants submits that the Claim should be struck as doomed to fail because it fails to raise a cause of action recognized at law. The defendants say that it is plain and obvious the Claim lacks a reasonable prospect of success because it pleads unintelligible legal theories. The defendants also allege that because the Claim is prolix and confusing, it fails to state the real issues.

[23] For example, the Claim pleads the existence of a lease agreement and the common law of contracts. The defendants submit that these allegations not only duplicate the applications already before the RTB, they also concern breaches of the RTA, which are not properly subject to a civil action: s. 58(3), RTA. The defendants submit that to the extent other issues are raised in the Claim, such as defamation and emotional stress, there are insufficient material facts to support those issues.

[24] Under Rule 9-5(1)(a), a pleading may be struck if, assuming the facts pled to be true, it is plain and obvious the claim has no reasonable prospect of success. A pleading may also be struck under paras. (b) and (c) where it contains material that is, for example, frivolous, or it will delay the fair trial of the claim.

[25] A motion to strike is to be used with care and only after taking a generous approach, erring on the side of allowing a novel but arguable claim to proceed: *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5 at paras. 64-66. However, a claim should not be struck where, upon amendment, it could disclose a reasonable cause of action, especially for plaintiffs who are self-represented: *Olumide v. British Columbia (Human Rights Tribunal)*, 2019 BCCA 386 at para. 10.

[26] In my view, the plaintiff should be granted an opportunity to further amend the Claim to plead material facts capable of supporting the issues and causes of action identified, such as defamation. While I appreciate that the plaintiff has substantial

experience in other proceedings before this court and before administrative tribunals, such as the RTB, she is not legally trained and she is self-represented. In my view, despite the background facts, it would be premature and inconsistent with access to justice to strike the Claim, which the plaintiff has commenced in her preferred venue, without first providing her with an opportunity to further amend her Claim, to address the shortcomings identified by the defendants.

[27] Therefore, because I have concluded that the Claim, with the opportunity for further amended, might disclose a reasonable cause of action, I decline to strike the Claim at this juncture. I grant the plaintiff leave to further amend the Claim to address the issues raised by the defendants, such as pleading material facts capable of supporting a claim for defamation.

[28] The defendants may reapply to strike the Claim under Rule 9-5(1) should the plaintiff fail to further amend the Claim within three months of the date of this judgment or if, following any further amendment, the defendants wish to bring another application to strike the further amended Claim.

“E. McDonald J.”