Court of King's Bench of Alberta

Citation: Paradis Honey Ltd v Alberta, 2024 ABKB 22

Date: 20240112
Docket: 2003 22676
Registry: Edmonton

Between:

Paradis Honey Ltd

Plaintiff

- and -

His Majesty the King in Right of Alberta; Agricultural Financial Services Corporation; ABC Corporation operating as AgriStability; XYZ Corporation operating as Agricultural Financial Services Corporation

Defendants

Reasons for Decision
of
Applications Judge W.S. Schlosser

Reasons

[1] Agricultural Financial Services Corporation ("AFSC") applies to dismiss the Plaintiff's claim on the basis that there is no merit to it. The lawsuit is about coverage for farm losses. The central issue, according to the applicants, is whether relief from forfeiture is available (para 20 of the Statement of Claim). The Plaintiff argues that it is mainly a matter of contractual interpretation.

Cases Cited

By the Parties

Falk Bros Industries Ltd v Elance Steel Fabricating Co, [1989] 2 SCR 778; ***Saskatchewan River Bungalows Ltd v Maritime Life Assurance Co,*** 1994 CanLII 100 (SCC), [1994] 2 SCR 490; ***Williams Estate v Paul Revere Life Insurance,*** 1997 CarswellOnt 2450 (ONCA); *Judicature Act*, RSA 2000, c J-2; *Insurance Act*, RSA 2000, c I-3; ***Weir-Jones Technical Services Incorporated v Purolator Courier Ltd***, 2019 ABCA 49; ***Ledcor Construction Ltd v Northbridge Indemnity Insurance Co***, 2016 SCC 37 (CanLII), [2016] 2 SCR 23; ***Marche v Halifax Insurance Co***, 2005 SCC 6 (CanLII), [2005] 1 SCR 47; ***Atlantic Paper Stock Ltd v St. Anne-Nackawic Pulp and Paper Company Limited,*** 1975 CanLII 170 (SCC), [1976] 1 SCR 580; ***Tomko v Wawanesa Mutual Insurance Co et al,*** 2007 MBCA 8; ***Helme v Claus***, 2008 BCSC 1523; *Farm Income Protection Act*, SC 1991, c 22.

By the Court

216927 Alberta Ltd v Fox Creek (Town), 1990 ABCA 29; ***Bowlen v Digger Excavating (1983) Ltd***, 2001 ABCA 214; ***Styles v Alberta Investment Management Corp***, 2017 ABCA 1(leave to appeal refused) [2017] SCCA 76; ***Funk v Wawanesa Mutual Insurance Company***, 2018 ABCA 200, (leave to appeal refused) [2018] SCCA 337; ***Canada (Attorney General) v Bouz***, 2019 ABQB 422; ***Ontario (Attorney General) v 8477 Darlington Crescent***, 2011 ONCA 363; ***Kozel v The Personal Insurance Company***, 2014 ONCA 130; ***Poplar Point First Nation Development Corp v Thunder Bay (City)***, 2016 ONCA 934; ***Hansraj v Ao***, 2004 ABCA 223; ***Tamglass American Inc v Richter, Allen & Taylor Inc***, 2005 ABCA 341 (*subnom* ***Re Goldray, Inc***); ***Bass v Calgary Planning Authority***, 2019 ABCA 139; ***Alberta Human Rights Commission (Director) v Vegreville Autobody (1993) Ltd***, 2018 ABCA 246; ***Kehewin Cree Nation v Mulvey***, 2013 ABCA 294; ***Northern Sunrise (County) v De Meyer***, 2009 ABCA 205; ***Bhasin v Hrynew,*** 2014 SCC 71; ***Graham Construction and Engineering Inc v Alberta (Infrastructure),*** 2021 ABQB 184.

Facts

[2] Paradis Honey Ltd ("Paradis") runs an apiary near Girouxville, Alberta. Mike and Lise Paradis are seventh generation beekeepers.

[3] For the past 35 years, Paradis has taken its hives to the interior of BC in the spring. This gives the bees an early start to a fecund and productive summer. It also provides an income stream, as the bees are contracted to pollinate the blueberry crops in British Columbia. The bees are returned to Alberta in June.

[4] AFSC provides AgriStability and AgriInsurance plans to protect Alberta farmers. The two plans are linked. Qualifying producers are required to purchase AFSC's AgriInsurance in order to participate fully in the AgriStability plan. If they do not purchase AgriInsurance and they suffer what would have been an insured loss, their benefits under the AgriStability plan are reduced by 70% plus the costs of AgriInsurance premiums.

[5] In order to enjoy AgriInsurance and AgriStability coverage beekeepers are required to have their bees in the province. Paradis had returned its bees to Alberta by June 20 every year.

[6] In 2016, AFSC changed a requirement for AgriInsurance. The bees had to be back in the province by May 31, rather than June 20. Otherwise AgriInsurance coverage would not be available. The reasons for the changed deadline are unknown. There was apparently no consultation with producers. It is unknown whether the decision to move the deadline was (or could have been) judicially reviewed. When producers were consulted, 82% opposed the earlier deadline and it was returned to June 20 in 2021.

[7] Paradis could not comply with the May 31 deadline. It interfered with their long-established best practices for the health and well-being of their bees. It also interfered with their BC pollination contracts.

[8] Paradis did not obtain AgriInsurance for the 2018 and 2020 production years. In 2018, Paradis suffered a loss of $94,305 and $99,188 in 2020.

[9] Producers who suffer loss and have failed to obtain AFSC's AgriInsurance in any given production year have their AgriStability benefits reduced by a deemed 70% plus premium costs. The Deeming Provision provides:

> Deemed benefits will be calculated for Participants who were excluded from participating in AgriInsurance for reasons of fraud, misrepresentation, non-payment of premiums *or failure to comply with other AgriInsurance participation requirements.*
>
> (emphasis added)

[10] Paradis argues that it was excluded from participating in AgriInsurance through no fault of their own. Paradis did not pay premiums because they were not eligible. They could not participate because they could not (or would not) meet the changed deadlines.

[11] I do not find the deeming clause to be ambiguous, or qualified by the interpretive principles of *noscitur a socii* or *ejusdem generis*. There was plainly a failure to comply with the AgriInsurance participation requirements because Paradis could not or would not return their bees to the province by the changed deadline. Fault does not enter into it. The clause is wide enough to cover negligence or inadvertence, as well as deliberate acts that would disqualify a producer from coverage.

[12] Paradis asks for relief from forfeiture imposed by the deeming provision quoted above.

Relief from Forfeiture

[13] Relief from forfeiture is available under s 10 of the *Judicature Act:*

> **10** Subject to appeal as in other cases, *the Court has power to relieve against all penalties and forfeitures* and, in granting relief, to impose any terms as to costs, expenses, damages, compensation and all other matters that the Court sees fit.
>
> (emphasis added)

[14] The *Act* also provides (s 15) that equity prevails where the rules of law and equity conflict.

[15] Relief from forfeiture is also available under the *Insurance Act:*

> **520** If the Court considers it inequitable that there has been a forfeiture or avoidance of insurance, in whole or in part, on the ground that there has been imperfect compliance with
>
> (a) a statutory condition, or
>
> (b) a condition or term of a contract
>
> as to the proof of loss to be given by the insured or the claimant or another matter or thing done or omitted to be done by the insured or the claimant with respect to the loss, the Court may relieve against the forfeiture or avoidance on any terms it considers just.

[16] These provisions are among the big talkers of the statute world. The 'power to relieve against all penalties and forfeitures' in the *Judicature Act* has been whittled down to almost nothing by the decided cases. 'All' as in 'all penalties and forfeitures' (from s 10 above) doesn't mean 'any'. The *Insurance Act* does not assist because this is not an instance of 'imperfect compliance' but rather one of non-compliance.

[17] ***Saskatchewan River Bungalows*** was an appeal from the Alberta Court of Appeal on the section of the *Judicature Act* quoted above. It was about a late payment of an insurance premium. Major J, writing for the Court (at page 504) instructs us that relief from forfeiture is a discretionary equitable remedy, requiring the Court to consider:

1. The conduct of the applicant,

2. The gravity of the breach, and

3. The disparity between the value of the property forfeit and the damage caused by the breach.

[18] The party seeking the relief has the burden (eg. ***Darlington Crescent*** at para 87, ***Kozel*** at paras 28-29). There must be an element of unconscionability: ***Fox Creek*** (at paras 42-43), ***Digger*** (at para 36), and ***Saskatchewan River Bungalows*** (above).

[19] The power to relieve from forfeiture under the *Judicature Act* looks to be wide and largely unfettered. However, it applies only to *contractual* penalties and forfeitures:

> ... the equitable jurisdiction of the court to relieve against penalties and forfeitures is applicable only to contractual penalties and forfeitures. The power does not apply to penalties or forfeitures imposed by statute: ***R. v. Canadian Northern Railway***, 1923 CanLII 444 (UK JCPC), [1923] 3 D.L.R. 719 (Canada P.C.). Further, this Court has interpreted the term "penalty" in the relevant provision of the *Judicature Act* (the predecessor to s. 10) to mean "contractual penalty"; the provision does not grant a new and extended right to intervene in *any* case of a forfeiture or penalty…. More recently, this Court has held that the doctrine does not apply to relieve against the mandatory operation of a rule of civil procedure,

> noting that "courts have no 'inherent power' to do what statutes forbid": ***Hansraj v. Ao***, 2004 ABCA 223(Alta. C.A.) at para. 62-66.
>
> (***Tamglass***, para 22).

[20] On this latter point see: ***Hansraj*** at paras 62-66, ***Northern Sunrise (County)*** at para 7, ***Kehewin Cree Nation*** at paras 10-14, ***Funk*** at para 26, ***Alberta Human Rights Commission (Director)*** at para 7-8, ***Bass*** at para 19 and ***Tamglass*** (*subnom* ***Re Goldray, Inc***) at para 22.

[21] The Court's power to grant relief is neither 'unlimited' nor 'unfettered'; ***Union Eagle Ltd v Golden Achievement Ltd,*** [1997] AC 514 at p. 518-9 (PC), cited with approval in ***Styles*** (at para 55):

> The notion that the court's jurisdiction to grant relief is "unlimited and unfettered" (per Lord Simon of Glaisdale in ***Shiloh Spinners Ltd. v. Harding*** [1973] A.C. 691, 726) was rejected as a "beguiling heresy" by the House of Lords in ***Scandinavian Trading Tanker Co. A.B. v. Flota Petrolera Ecuatoriana,*** [1983] 2 A.C. 694, 700 (***The Scaptrade***). It is worth pausing to notice why it continues to beguile and why it is a heresy. It has the obvious merit of allowing the court to impose what it considers to be a fair solution in the individual case. The principle that equity will restrain the enforcement of legal rights when it would be unconscionable to insist upon them has an attractive breadth. But the reasons why the courts have rejected such generalisations are founded not merely upon authority (see *per* Lord Radcliffe in ***Campbell Discount Co. Ltd. v. Bridge*** [1962] A.C. 600, 626) but also upon practical considerations of business. These are, in summary, that in many forms of transaction it is of great importance that if something happens for which the contract has made express provision, the parties should know with certainty that the terms of the contract will be enforced. The existence of an undefined discretion to refuse to enforce the contract on the ground that this would be "unconscionable" is sufficient to create uncertainty. Even if it is most unlikely that a discretion to grant relief will be exercised, its mere existence enables litigation to be employed as a negotiating tactic . . .

[22] This invites a consideration of the corresponding, organizing principle of good faith in the interpretation of contracts found in ***Bhasin***. The Court of Appeal in ***Styles*** (at para 53) notes:

> [53] As ***Bhasin*** itself notes, even the organizing principle of good faith (when it applies) must not ". . . veer into a form of *ad hoc* judicial moralism or 'palm tree' justice":
>
> > 70 The principle of good faith must be applied in a manner that is consistent with the fundamental commitments of the common law of contract which generally places great weight on the freedom of contracting parties to pursue their individual self-interest. In commerce, a party may sometimes cause loss to another -- even intentionally -- in the legitimate pursuit of economic self-interest: ***A.I. Enterprises Ltd. v. Bram Enterprises Ltd.***, 2014 SCC 12, [2014] 1 S.C.R. 177, at para. 31. Doing so is not necessarily contrary to good faith and in some cases has actually been encouraged by the courts on the basis of economic efficiency:

> ***Bank of America Canada v. Mutual Trust Co.,*** 2002 SCC 43, [2002] 2 S.C.R. 601, at para. 31. The development of the principle of good faith must be clear not to veer into a form of *ad hoc* judicial moralism or "palm tree" justice. In particular, the organizing principle of good faith should not be used as a pretext for scrutinizing the motives of contracting parties.

Bhasin does not invite judicial examination of the rights granted by contracts to determine if they are "fair", or whether the consequences of performance are more or less advantageous to either party than that party might have hoped or desired.

[23] In ***Funk*** (at para 26), suffering a loss that is not covered by an insurance policy is not the failure to perform a covenant in the policy justifying relief from forfeiture. In ***Digger***, the Court of Appeal refused to return a real estate deposit after an extension of the closing deadline had been refused. In ***Styles*** (at paras 66-71), the Court of Appeal refused to award a bonus to an employee who failed to meet the terms of an employee long-term incentive plan; noting that awarding a bonus that had not been earned would be unwarranted judicial benevolence not 'relief from forfeiture'. An unlimited and unfettered jurisdiction to grant what the Court considers to be a 'fair solution' remains a 'beguiling hearsay'.

[24] It does not matter whether AFSC's decision to change the deadline was ill-advised or unreasonable, or whether I might think that the law could sometimes use a little palm tree justice[1], the decided cases preclude relief. Relief from forfeiture is not available to avoid the consequences of an unambiguous deeming provision, or to impose a benefit where there is none.

[25] Paradis failed to comply with the AgriInsurance participation requirements. This was not inadvertent. It was deliberate because it was contrary to Paradis' best practices and it would interfere with a secondary income stream. Paradis was not unaware of the consequences in the event that they suffered a production loss covered by the AgriStability plan; not in 2018, and certainly not in 2020. By 2020 they had been through this before.

[26] This case is probably closest to ***Styles*** or ***Funk***. Ironically, the plaintiff might have been better off seeking Judicial Review of the decision to change the deadline on the reasonableness standard, were this available.

Disposition

[27] The application is allowed. The case is dismissed.

Heard on the 14th day of December, 2023.
Dated at the City of Edmonton, Alberta this 12th day of January, 2024.

[1] Judges 4:5, ***Bouz*** at paras 22-27, ***Graham Construction and Engineering Inc*** at para 44.

W.S. Schlosser
A.J.C.K.B.A.

Appearances:

Tanner J. Kovacs & Zoe Hastings, Student-at-law
for the Applicant Agriculture Financial Services Corporation

Shawn Sipma
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for the Respondent Paradis Honey Ltd