

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Mitchell v. Maze*,
2024 BCSC 1107

Date: 20240129
Docket: S220320
Registry: Vancouver

Between:

Brandon Jay Mitchell, Squadra Capital Limited Partnership
Plaintiffs

And:

**Thomas Robert Moir Maze a.k.a. Tom Maze, Jean Barbara Moir,
Stephan Maze, and the Canadian Imperial Bank of Commerce a.k.a. CIBC**
Defendants

Before: The Honourable Madam Justice Sharma

Oral Reasons for Judgment

In Chambers

The Plaintiff Brandon Jay Mitchell, appearing
in person and as agent for Squadra Capital
Limited Partnership:

B.J. Mitchell

The Defendant Thomas Robert Moir Maze,
appearing in person (on January 24, 2024):

T. Maze

Counsel for the Defendant CIBC:

M. Wray
M. Gargargo, Articled Student

Place and Date of Hearing:

Vancouver, B.C.
January 24 and 29, 2024

Place and Date of Judgment:

Vancouver, B.C.
January 29, 2024

[1] **THE COURT:** This is an application brought by CIBC for a number of orders. Stated generally, they are seeking to have the claim struck in its entirety as against CIBC or, in the alternative, to have specific paragraphs in the amended notice of civil claim struck. They are also seeking a declaration that the plaintiff Brandon Mitchell be declared a vexatious litigant, meaning that he be prohibited from filing any legal proceedings or applications in any court without leave of the court. They are also seeking special costs.

[2] Mr. Mitchell represents himself in this matter, and before me. He opposes the relief being sought and says that the Court should be mindful that he drafted the materials himself, and that he is not a lawyer. His position is that he has valid claims against CIBC as contained in the amended notice of civil claim, so the application with regard to striking the claim should be dismissed. He says that he took measures to avoid adding CIBC, and, in his view, that it is relevant and supportive of his position that the application should be dismissed. He also relies on that to oppose CIBC's seeking to declare him a vexatious litigant. More generally, in relation to that order, he submits the grounds have not been met on the evidence before the Court.

[3] This hearing started on January 24, 2024. At that time, the defendant Thomas Robert Maze was in attendance, although he had to leave the hearing early. Both parties here assure me that Mr. Maze was aware of the date and time of this continuation of the hearing. I am aware that at a very late stage of today's hearing, he attempted to join the hearing by MS Teams, but unfortunately it was not possible to admit him. I trust that Mr. Wray will convey to Mr. Maze the contents of my ruling. However, in any event, my recollection is Mr. Maze took no position on most of the orders sought, although he appeared to be in agreement with CIBC's seeking to declare Mr. Mitchell to be a vexatious litigant.

[4] I turn first to the relief seeking to strike the claim as against CIBC. CIBC has included several grounds upon which they say that it is justified, including Rule 9-5(1)(a)–(b) of the *Supreme Court Civil Rules*. I do not find that relief should be granted under Rule 9-5(1)(a), which operates to strike a pleading that discloses

no claim or defence as the case may be. Under Rule 9-5(1)(a), one must take the pleadings as drafted to be true. That being the case, I am not satisfied the claim can be struck as against CIBC under Rule 9-5(1)(a). CIBC also relies on Rule 9-5(1)(b) which allows striking claims where the pleading is unnecessary, scandalous, frivolous, or vexatious.

[5] Another ground raised is that CIBC was not properly added to the proceeding. CIBC became a party in July 2023 when Mr. Mitchell filed his amended notice of civil claim. He was allowed to file one amendment without making an application; he did that, but he purported to add CIBC as a party. Mr. Mitchell explained that he believed what he did was correct, and in particular, he believed it was efficient. He wanted to amend his pleading, and he wanted to add CIBC as a party. He submits he believed it was more efficient to add CIBC that way as opposed to bringing another application. He emphasized this point because he is sensitive to how his actions are described in light of the fact that CIBC is seeking an order that he be declared a vexatious litigant.

[6] CIBC was not added to the litigation properly and that is a valid basis to remove it. An application had to be made to add it. That gives the court the opportunity to look at the claim being made and whether it is appropriate to be made against that particular party, possibly taking into account, if applicable, whether at that time there is a limitation period issue. In my view, that does justify giving relief to CIBC, but the relief that I am granting is not quite what CIBC has asked for.

[7] In my view, the appropriate relief is simply to remove CIBC as a defendant rather than striking any portion of the claim. In other words, I am not ordering any changes to the amended statement of claim itself. The reason why I make that order, in part, also explains why I am willing to grant CIBC any relief.

[8] Mr. Mitchell's claim as drafted, from a legal point of view, does not actually seek any relief against CIBC. He is quite right that CIBC is mentioned, and there are places where he makes a statement that appears to find fault with what CIBC did or said. In Mr. Mitchell's mind, that amounts to an appropriate claim. I make no

comment about whether that is correct because I am not removing CIBC on the basis that the notice of civil claim does not disclose a valid cause of action. I am removing CIBC as a party because it was not properly added. That means that Mr. Mitchell would need to bring an application to add CIBC, and at that time, he would need to persuade the court why at that stage, CIBC should be added.

[9] As it stands right now, one of the ways in which CIBC is implicated in the pleadings has to do with the holding of funds that need to be distributed to investors. That process is underway. I do not know its progress, but court orders have been made in relation to that distribution.

[10] I realize that does not deal with the entirety of the money in that account, and Mr. Mitchell's position is that there may be an issue about that going forward. In relation only to those funds to be paid out to investors, CIBC takes no position on entitlement to those funds. It agrees that funds could be paid into court subject to Mr. Mitchell assuring himself that the account balance is accurate. Mr. Mitchell accepted that would be a good solution. Subject to other comments I will make, I am of the view that could be an appropriate and better way to deal with some of the allegations made about CIBC's holding of the funds.

[11] However, there are other facts that implicate CIBC in Mr. Mitchell's notice of civil claim. There is the allegation about Mr. Maze getting credit cards from CIBC, which Mr. Mitchell says was improper. While CIBC is mentioned, there is no claim brought against it regarding those allegations. Nor can I see how there could be a claim for damage because Mr. Mitchell, in the claim itself, indicates those credit cards were cancelled quickly. To the extent there might be, contained within those paragraphs addressing these facts, some allegation about misrepresentation or improper conduct, that would appear to be an allegation made as against Mr. Maze and not CIBC.

[12] However, Mr. Mitchell's claim as against CIBC is the belief that it was wrong to freeze the account when it did. During discussions with him at this hearing, he pointed out that claim is also involved, in some way, with his ongoing dispute with

Mr. Maze. However, the main crux of his complaint against CIBC is that it froze funds at a particular point in time. He says it was improper for it to have done so, and CIBC ought to have acceded to his requests to move the money into a different vehicle. At its heart, that is a claim for breach of contract, and that is not pled in the amended notice of civil claim.

[13] I do not make these comments or any conclusions about how the pleadings are drafted in this case holding Mr. Mitchell to the same standard that I might with regard to a lawyer. Mr. Mitchell appropriately pointed out that the court should be sensitive to people who are drafting their own pleadings. However, I note Mr. Mitchell is more sophisticated than many in-person litigants. His pleadings read very well and are clear. He has represented himself in court and filed pleadings before, and he has some familiarity with court processes. I say that to assure him that what he has written in the claim is clear.

[14] He suggested he should be allowed to amend his pleading. The problem is that some of the things he described to me at the hearing as constituting his claim simply do not exist in any form in the pleading itself. That needs to be looked at carefully and, in my view, cannot be addressed by way of amending the pleading. It is simply too prejudicial to CIBC to overlook or ignore the requirement to make application under the appropriate rule to add a party. In my view, it is appropriate and necessary to remove CIBC as a defendant from this proceeding.

[15] I reiterate that even if CIBC is not a party, that does not preclude the funds being paid into court, because there is the interpleader mechanism. It also does not preclude, in the future, some statement or declaration of this Court being made about the account and the status of it.

[16] However, Mr. Mitchell did not follow the appropriate way to add a party, so I grant CIBC the relief not as sought to strike the pleading, but to remove it as a defendant.

[17] CIBC also seeks a declaration that Mr. Mitchell be declared a vexatious litigant. Counsel appropriately referred to s. 18 of the *Supreme Court Act*, R.S.B.C. 1996, c. 443, as well as some cases that set out the test. CIBC submits Mr. Mitchell has made misrepresentations to it and to the court. Mr. Mitchell does not agree with that characterization. Mr. Mitchell submits that in his view, CIBC failed to abide by a court order that was issued regarding distribution of funds.

[18] Orders for declaration of a vexatious litigant are typically, but not exclusively, made when there are an excessive number of frivolous and vexatious proceedings brought in the court. CIBC is concerned by the number of applications being brought within this action. It may be that at some point, the types and number of applications being brought in this action would justify a declaration, but I am not satisfied at this point that Mr. Mitchell's filings in this case justify an order to have him declared vexatious.

[19] I am concerned by the number of without-notice applications being made in this action. I will make some comments at the end in the hope of assisting Mr. Mitchell to understand when it is appropriate to file a without-notice application, but I remind him that once a party has responded in a commercial case, it is the rare case where it would be appropriate to make a without-notice application. More importantly, I do not see anything in the record of this proceeding that would have justified without-notice applications. I am aware that there have been at least a few without-notice applications filed by Mr. Mitchell. In my view, those were inappropriately filed as without notice.. He stated that he believed informing counsel in person, or by email or other written communication, that he intended to bring an application amounted to notice. However, that seems inconsistent with him specifically labelling the applications as being without-notice. Despite that, in the overall circumstances, I am not satisfied that it is appropriate to have him declared a vexatious litigant at this point.

[20] Also, I clarify that if there are an abundance of instances of Mr. Mitchell asking for transcripts or making requests to appear, improperly directed to

Vancouver Scheduling. That is a concern of this Court. Requests to appear are not meant to be a substitute for filing appropriate applications. However, the fact that he may have asked for transcripts from previous hearings does not amount to it being vexatious litigation.

[21] That is the end of my ruling on those matters.

(DISCUSSION)

(SUBMISSIONS ON COSTS)

[22] THE COURT: The applicant CIBC has asked for special costs in relation to this hearing. The test for special costs is well known. It is meant to be a rebuke to a party's conduct in the litigation.

[23] Mr. Wray on behalf of CIBC relies on what he says has been Mr. Mitchell's difficult conduct in these proceedings based mostly on the same material that was supporting his application that Mr. Mitchell be declared vexatious, although I do not mean to suggest that there is a one-to-one correspondence between facts supporting application for declaration of vexatious litigation and special costs.

[24] I have decided not to issue the vexatious litigant declaration against Mr. Mitchell at this time, although I am concerned by the number of applications that he has brought. However, an order for special costs is meant to be rare, and in relation to this particular application I am not satisfied on the evidence in front of me that it is appropriate to order special costs.

[25] I also note that CIBC was successful on only part of its application, not the whole application, which is also another reason why I am not ordering special costs. In relation to the application to have CIBC removed, it is appropriate for CIBC to get its costs today on the normal scale.

[26] I will repeat for the benefit of Mr. Mitchell, that it concerns the Court when there is a flurry of filings in one action over a short period; that should be avoided.

[27] I will also comment that Supreme Court Scheduling staff set matters down for hearing. That staff does not receive submissions. They are not to be asked to make decisions. And, in case there was any question -- and I should not have to say this -- the staff in the Registry and in Scheduling must be treated with the utmost respect and be exposed to nothing other than absolutely upstanding conduct. If this Court understands that a litigant fails to do so, this Court will do something about it.

[28] I am giving Mr. Mitchell the benefit of the doubt, trust that my comments will be taken to heart and that going forward, he is going to be more careful in his conduct in the litigation and his conduct with Court staff.

“Sharma J.”