Citation: *Cowell v. Sinclair,* 2017 YKSM 6

Date: 20170710
Docket: 16-S0055
16-S0081
Registry: Whitehorse

SMALL CLAIMS COURT OF YUKON
Before His Honour Judge Chisholm

CARL COWELL AND MARJORIE COWELL

Plaintiffs

v.

GORDON SINCLAIR

Defendant

Appearances:
Carl and Marjorie Cowell — Appearing on their own behalf
Mark E. Wallace — Counsel for Defendant

REASONS FOR JUDGMENT

[1] Mr. Carl Cowell and Ms. Marjorie Cowell commenced two separate actions in this court, both involving the Defendant, Mr. Gordon Sinclair.

[2] The issue that arises is whether or not these separate claims are more properly one claim. If I were to determine that is the case, as the monetary value of both matters combined exceeds the monetary limit for Small Claims Court, this Court would have no jurisdiction to hear the action.

Relevant Facts

[3] Mr. Cowell is the nephew of Mr. Sinclair. In 2002, the two agreed that Mr. Cowell could build a cabin on Mr. Sinclair's acreage. It appears that both Mr. Cowell and Mr.

Sinclair were involved to some extent in the design and building of the structure.

[4] Subsequently, Mr. Cowell had permission to live in the cabin rent free. At some point after Ms. Cowell and Mr. Cowell began a relationship, she commenced residing with him in the cabin. The Cowells argue that they spent time and money substantially upgrading the cabin. It is also argued that Mr. Cowell did other work for Mr. Sinclair for no remuneration, specifically assisting the latter in securing a grazing lease. The Cowells say this work formed part of an agreement between Mr. Cowell and Mr. Sinclair whereby the latter would subdivide the acreage and transfer 23 acres (of his 160 acres) and the cabin to Mr. Cowell.

[5] Neither the subdivision nor the transfer of the cabin ever occurred.

[6] The Cowells claim that Mr. Sinclair, in not following through on the transfer agreement as it related to the cabin, was unjustly enriched. They seek $25,000 in this regard[1].

[7] In terms of the second claim, the Cowells say that Mr. Sinclair ran into financial difficulties with the Canada Revenue Agency. As a result of this, he approached the Cowells to buy his acreage. The Cowells were interested. Despite significant time and effort to finalize a purchase, the sale was never completed. The Cowells have submitted a claim for just under $18,000, alleging breach of contract. The amount claimed is comprised of legal fees, the Cowells time and efforts to attempt to finalize the

[1] The Cowells have not claimed as part of this action an interest in the 23 acres of land, as they understand that this Court lacks jurisdiction to deal with an action regarding an interest in land.

purchase, and the cost of work done by the Cowells on the property prior to the anticipated sale, including obtaining permits and utility installments.

[8] Mr. Sinclair filed a Counterclaim to this action in the amount of $19,500, alleging that the Cowells took certain items of Mr. Sinclair's when leaving his property. He also alleges that the Cowells left a hole in the exterior wall of the cabin, which could possibly lead to damage to the cabin's interior. He alleges that he has been unable to gain access to the interior to assess whether there is damage because the Cowells locked him out of the premises.

[9] The Cowells ask that the two separate actions be tried individually in Small Claims Court whereas the Defendant takes the position that the matters are so interrelated that they should be heard as one action in Supreme Court.

Analysis

One or more causes of action

[10] Pursuant to s. 2 of the *Small Claims Court Act* (the *'Act'*), the monetary jurisdiction in this forum is limited to actions in which the monetary value does not exceed $25,000, not including interest and expenses.

[11] I should point out at the outset that the Plaintiffs have expressly highlighted their ongoing desire to proceed in Small Claims Court because of its accessibility and its inexpensive nature.

[12] The forum of choice should be respected where possible. As stated in *Shaughnessy v. Roth*, 2006 BCCA 547, in reference to the British Columbia Small Claims legislation:

> 34 …The mandate of the legislation and the ***Rules*** is to provide an informal and efficient process for the disposition of claims up to $25,000. Beyond that amount the legislature intended that claims should be dealt with in the Supreme Court, but the right of parties to have their cases dealt with in the forum of their choice is respected. This is why they are given the right to abandon amounts in excess of $25,000.
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> 35 In ***Rajakaruna v. Air France*** (1979), 25 O.R. (2d) 156 (S.C.) at 158, the Court stated, ". . . it appears to me of the utmost importance that the plaintiffs should be permitted, save in exceptional circumstances, to take their claims to the Small Claims Court when it is within the jurisdiction of that Court". I agree completely with that statement (see also Hanington v. Stewart (1873), 14 N.B.R. 242 (S.C.)). (emphasis added)

[13] If I find that the Plaintiffs' two claims constitute only one action, the Plaintiffs will be faced with the choice of abandoning amounts in excess of $25,000 in order to remain in the Small Claims jurisdiction (section 10.1(1) of the *Act*) or proceeding with the action in Supreme Court.

[14] In order to determine whether the two claims filed by the Plaintiffs may be heard by this Court, I firstly consider whether there is one or more causes of action.

[15] In the decision of *KNP Headwear Inc. v. Levinson* (2005), 205 O.A.C. 291 (Ont. Div. Ct.), Then J. stated:

> While there is no definition of "cause of action" under either the Rules of Civil Procedure or under the Small Claims Court Rules, Black's Law Dictionary offers two alternate definitions. The first is "a group of operative facts giving rise to one or more basis for suing"; the second is the "legal theory of a lawsuit". (para. 11)

[16] In the decision of *Kids Only Market Ltd. v. Chan* [1993] B.C.J. No. 2728 (B.C. Prov. Ct.), it was determined that the Claimant's two actions regarding the termination of a commercial tenancy arose as a result of a single breach by the Defendant which should be dealt with in one proceeding. The Court stated:

> To allow the Claimant to split its case by proceeding with two separate claims would defeat not only the monetary jurisdiction of the Court but also the purpose of the Act and Rules. The purpose is to allow a claim for $10,000.00 or less to be resolved in a just, speedy, inexpensive and simple manner (section 2(1) of the Act supra). This avoids the more complicated and expensive procedure provided for in the Supreme Court Rules. This is in fact a claim for $19,889.31 and both parties are entitled to the benefits of the Supreme Court Rules. (para. 14)

[17] As noted in *Kids Only Market Ltd.*, the splitting of one cause of action may ultimately lead to obstacles and inefficiencies in the court process, for example: increased court time, inconvenience to witnesses, the possibility of inconsistent results, and re-litigation of the same issues.

[18] Similarly, the decision in *Staff Mountain Inc. v. Indis Inc.* (2015), 273 A.C.W.S. (3d) 89, 2015 CarswellOnt 20925 (Sm. Cl. Ct.), determined that invoices resulting from one Agreement between the parties could not be construed as separate contracts for the purpose of multiple actions (at para. 18).

[19] In *Cahoon v. Franks* (1966), 60 D.L.R. (2d) 237 (Alta. S.C. (A.D.)), Porter J.A. considered whether multiple causes of action stemmed from a motor vehicle accident, as the Plaintiff initially sued for loss of his vehicle, and subsequently amended his claim beyond the limitation period to sue for damages for personal injuries. Porter

J.A. ultimately concluded that the factual situation giving rise to a cause of action was the Defendant's alleged negligence. He stated:

> …'The factual situation' which gave the plaintiff a cause of action was the negligence of the defendant which caused the plaintiff to suffer damage. This single cause of action cannot be split to be made the subject of several causes of action. (para. 12)

[20] In the matter before me, as indicated, one of the claims is the alleged unjust enrichment of the Defendant with respect to work done by the Plaintiffs, whereas the other claim alleges a breach of contract by the Defendant with respect to a failed purchase of property by the Plaintiffs. The alleged facts of the respective claims are different and do not even transpire concurrently.

[21] Although the cabin is part of the subject matter in both claims, in my view there are nonetheless two separate and distinct causes of action.

[22] However, the Defendant also submits that as the two matters are inextricably intertwined, it is appropriate to consider them as part of the same dispute. The Defendant refers to the decision of *Bishop v. Lamb,* 2001 BCPC 376 in which the Court heard two separate actions as two trials, but determined that the actions were so closely related that they amounted to a single dispute between the parties. The Court held that any damages payable could not exceed $10,000, exclusive of interests and costs, which was at that time the maximum monetary value for a claim.

[23] The facts in that matter stemmed from a horse boarding joint venture whereby the Defendants were commercial tenants of the Plaintiff. Although there were a number of legal issues to be decided, the Court found that the Plaintiff's two causes of action

were ‘integrally interwoven’, and that they should have been commenced as one proceeding (at para. 102).

[24] Considering the *Bishop v. Land* decision more closely, it was held that the second action arose out of the joint venture, and therefore only one proceeding was appropriate. It should be noted, however, that the second action alleged a conversion of a trailer without lawful justification, while the first action was comprised of a number of claims, including a claim for rent pursuant to a lease. With respect, in my view the loss of property based on conversion is a separate action to the claim of rental arrears pursuant to a lease. Although both claims stemmed from the joint venture relationship, both the factual situations and the legal issues were different. I find I disagree with the decision reached by Stansfield A.C.J.

[25] The decision of *Artero v. Huntley* (2005), 145 A.C.W.S. (3d) 207, 2005 CarswellOnt 7935 (Ont. Sup. Ct.), provides a useful overview of the issue of one action versus multiple causes of action. As explained by Connolly D.J., situations have even arisen where, for example, different causes of action arise from the same fact situation:

> 31 There are occasions where the fact situation permits more than one cause of action to arise, but these are situations where each cause of action arises out of a discrete transaction. In Annex Publishing & Printing Inc. v. 866175 Ontario Ltd. [2002] O.J. No. 1802, (Quicklaw), it was held that two claims for printing services under a single account could support separate actions as each one was for a separate transaction based upon a separate order. In Kent v. Conquest Vacations Co. [2005] O.J. No. 312, (Divisional Court), G.D. Lane J. upheld judgments against a tour company brought by a husband and a wife in separate actions on the factually narrow ground, at para. 6, that the "Terms and Conditions" issued to vacationers by Conquest contained the words:
>
> > ".... (Y)ou and those on whose behalf you are booking become party to a contract with Conquest ...."

> 32 While the plaintiffs could have joined in the same claim, their own contractual relationships with the defendant raised separate causes of action.

[26] As indicated, the factual situations before me consist of issues which are factually, temporally and legally different.

[27] The Defendant, however, submits that findings of fact on the first action could impact the second claim. Although it is true that the background facts are of interest in understanding the relationship between the parties and how that relationship informs the two claims, I am not convinced that the findings of fact on one matter will necessarily impact the other. In any event, in my view, the issue of potential inconsistent findings of fact is a matter better argued with respect to whether the files should be consolidated for hearing.

[28] The Defendant also argues that there may be findings of credibility in one file which could impact the second file. This again, in my view, is a matter that is better argued in terms of a consolidation or joinder of files for hearing. It does not specifically impact the issue of whether a party has separate legal actions against a defendant.

[29] The Defendant further submits that there is a potential issue estoppel argument if the matters were to proceed separately. Based on my finding that these are two discrete legal issues, I am unable to accept this submission.

[30] As I have concluded that these are two separate actions, I therefore find it appropriate for both claims to proceed in Small Claims Court.

Joinder

[31] The next issue for consideration is whether the two trials should be consolidated and heard by one judge.

[32] In *Webster v. Webster* (1979), 101 D.L.R. (3d) 248 (B.C. C.A.), it was determined that two separate actions, one pursuant to the *Divorce Act* and one for an alleged debt owed by the wife to the husband, should be heard by a judge at the same time.

[33] The Court stated:

> …The reasons are obvious as the evidence of the relationship, claims and disputes between the parties in both proceedings is so interwoven as to make separate trials at different times before different Judges undesirable and fraught with problems, not to mention expense. … (para. 11)

[34] The decision in *Merritt v. Imasco Enterprises Inc.* (1992), 31 A.C.W.S. (3d) 534, B.C.J. No. 160 (B.C. S.C.), considered *Webster* in analyzing whether the consolidation of two actions was appropriate, and determined that two questions should be asked:

> … The examination of the pleadings will answer the first question to be addressed: do common claims, disputes and relationships exist between the parties? But the next question which one must ask is: are they "so interwoven as to make separate trials at different times before different judges undesirable and fraught with problems and economic expense"? Webster v. Webster (1979) 12 B.C.L.R. 172 (C.A.). That second question cannot, in my respectful view, be determined solely by reference to the pleadings. Reference must also be made to matters disclosed outside the pleadings:
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> (1) will the order sought create a saving in pre-trial procedures, (in particular, pre-trial conferences)?
>
> (2) will there be a real reduction in the number of trial days taken up by the trials being heard at the same time?;

> (3) what is the potential for a party to be seriously inconvenienced by being required to attend a trial in which that party may have only a marginal interest?; and
>
> (4) will there be a real saving in experts' time and witness fees?
>
> This is in no way intended to be an exhaustive list. It merely sets out some of the factors which, it seems to me, ought to be weighed before making an order under R. 5(8).

[35] Considering the first question set out in *Merritt*, the relationship between the parties is a common thread in both disputes. There is also some commonality between the disputes, as they both involve, *inter alia*, the Defendant's cabin. The facts in the first action flow into the facts in the action subsequent in time.

[36] In terms of the second question, the parties in both actions are the same, and, as such, no other litigant would be inconvenienced by having the two matters heard together.

[37] There would be a savings in time in holding only one pre-trial conference. Having the matters heard together before one judge would also prevent the parties from having to attend court for two separate trials.

[38] Both files are essentially at the same stage of litigation, so one matter is not going to be delayed if the matters are consolidated.

[39] As mentioned above, the issue of contradictory findings of credibility and inconsistent finding of facts should be avoided.

[40] The decision in *5277095 Manitoba Ltd. v. Morrison Creek Commons Limited Partnership*, 2016 BCSC 640 considered these very issues on an application to have two separate actions heard together:

> 40 It is trite law that inconsistent findings may tend to bring the administration of justice into disrepute. That is one reason that a multiplicity of proceedings is to be avoided.
>
> 41 In the result, I believe the proper view is that the trials in the two actions should be heard together as there is a danger of inconsistent findings of fact and credibility. …

[41] By consolidating the matters for the purpose of trial, any such concerns are alleviated.

[42] In my view, it would be illogical and undesirable to put the parties through two separate trials before two different judges.

[43] I therefore order that the two actions be joined.

Conclusion

[44] I have determined that there are two separate legal questions to be considered with respect to the two claims filed by the Plaintiffs, firstly, whether only one cause of action exists – which would limit the recourse of the Plaintiffs to one claim; and secondly, if the first question is answered in the negative, whether the two claims should be joined for the purposes of trial.

[45] Regarding the first question, I find that as the two claims do not arise out of the same cause of action, both may properly proceed in Small Claims Court.

[46] Secondly, I find that the two separate trial matters should be joined and heard at the same time by one judge of this Court.

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CHISHOLM T.C.J.