

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Singh v. Singh*,
2024 BCSC 425

Date: 20240313
Docket: S248389
Registry: New Westminster

Between:

Sukhdeep Singh

Plaintiff

And

Arminder Singh

Defendant

And

**Pardeep Singh Sandhu, Dilpreet Singh Dhillon
and West Point Pacific Construction (64 Ave) Ltd.**

Third Parties

Before: The Honourable Justice Maisonville

Reasons for Judgment

Counsel for the Plaintiff:

R. Arora

Counsel for the Defendant:

M. Goyal

No other appearances

Place and Date of Summary Trial:

Abbotsford, B.C.
March 4, 2024

Place and Date of Judgment:

New Westminster, B.C.
March 13, 2024

Introduction

[1] The plaintiff, Sukhdeep Singh, seeks an order granting him summary judgment in the amount of \$100,000 against the defendant, Arminster Singh, pursuant to Rule 9-6 of the *Supreme Court Civil Rules* [*Rules*]. The plaintiff's submission is that there is no issue that needs to be determined by means of a summary trial, although in the event the court finds that a summary judgment is inappropriate, the plaintiff seeks a summary determination of the issues pursuant to Rule 9-7 of the *Rules*. The plaintiff also seeks interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79, and costs. The defendant is opposed to the application and seeks an adjournment or alternatively, that only a partial payment go to the plaintiff now.

[2] The judgment sought is as against the defendant for the amount of a deposit the plaintiff paid to the defendant pursuant to an assignment of contract of purchase and sale. That deposit was in the amount of \$100,000 and was paid to the defendant directly—not in trust or to a lawyer but rather, directly to the defendant. The plaintiff seeks the return of the deposit because the defendant failed to transfer title to the subject property to the plaintiff. This is in accordance with the terms of the assignment agreement. It is not due to the fault of the defendant; however, the assignment agreement sets out the terms.

[3] The property forming the subject matter of the action has been sold to third parties by way of court order and the documents were before the court. Thus, making it impossible for the defendant to transfer title of the subject property to the plaintiff.

Factual Background

[4] In March 2021, Pardeep Singh Sandhu and Dilpreet Singh Dhillon (the “Original Purchasers”) entered into a contract of purchase and sale (the “Head Contract”) with West Point Pacific Construction (64 Ave) Ltd. (“West Point”), in which they agreed to purchase a townhouse unit which was being constructed at 14285 64th Avenue in the City of Surrey, British Columbia (the “Property”). Their unit was

ultimately assigned the number #52. By an assignment agreement dated October 19, 2021, the Original Purchasers assigned their rights and obligations under the Head Contract to the defendant (the “First Assignment Agreement”).

[5] By means of the second assignment contract agreement on January 9, 2022, the defendant assigned his rights and obligations under the Head Contract to the plaintiff (the “Second Assignment Agreement”). Pursuant to the Second Assignment Agreement, the plaintiff paid a deposit directly to the defendant in the amount of \$100,000 to be applied towards the purchase price at completion of the transfer of the Property (the “Deposit”). Clause 3.1 of the Head Contract provided that the latest completion date for the Property would be 12 months from the stipulated estimated completion date of October 31, 2021. Accordingly, the latest completion date was consequently October 31, 2022. Both the First and the Second Assignment Agreements incorporated clause 3.1 which provided that, if the completion of the transfer of title of the Property did not occur by the latest completion date, i.e., October 31, 2022, the deposit would be returned.

[6] In June 2022, the entities holding the first mortgage charge against the title to the project plans commenced foreclosure proceedings against West Point and certain officers of West Point. In October 2022, the petitioners in the foreclosure proceedings obtained an order *nisi* with the BC Supreme Court with respect to the project lands, declaring that the petition respondents were in default of their mortgage obligations.

[7] A further application by the petitioners in the foreclosure proceedings was brought on February 23, 2023 and the BC Supreme Court approved the sale of lands on which the Property was being constructed to a third party purchaser in accordance with the terms of contract purchase and sale dated October 21, 2023 (the “Order Approving Sale”). The defendant, having failed to obtain title by that date, was unable to transfer title to the Property to the plaintiff by the latest completion date.

[8] The plaintiff filed a notice of claim on March 8, 2023, claiming breach of the Second Assignment Agreement, seeking reimbursement of the Deposit paid to the defendant.

[9] The defendant filed his response to civil claim on April 6, 2023.

[10] Unbeknownst to the plaintiff, the defendant had filed a third party notice against the Original Purchasers and West Point on May 10, 2023. The plaintiff was unaware as the defendant did not serve the third party notice on the plaintiff or the third party defendants in 2023, so the plaintiff carried on with his claim. The steps taken by the plaintiff between June and October 2023 were:

- a) served upon the defendant his list of documents;
- b) served upon the defendant's counsel unfiled copies of the summary judgment/trial application;
- c) agreed to a mutually convenient date for the defendant's counsel to examine the plaintiff;
- d) by consent of the parties, set a hearing date for the application for the week of January 8, 2024; and
- e) had to reschedule the hearing for the application for summary judgment as a consequence of a family emergency requiring the plaintiff to travel out of the country in January 2024.

By consent, that hearing was set to March 4, 2024. The application materials in respect of this summary judgment/summary trial matter were filed November 23, 2023.

[11] On January 12, 2024, the defendant served on the plaintiff his application material seeking leave of the court to serve the third party notice upon the third party defendants. This was when the plaintiff became aware for the first time the defendant had in fact filed a third party notice in this claim. In normal circumstances, a court order would not be required; however, the service was having to occur outside of the 60 days. This was the first time the plaintiff became aware that there was a third party notice application. While the plaintiff filed a response to the third

party notice application opposing relief sought by the defendant, ultimately, they agreed by consent order as follows:

By consent, the Plaintiff's Notice of Application filed on November 15, 2023, scheduled to be heard in the Abbotsford court registry during the week of March 4, 2024 (on the assize list) (the "March Application"), shall proceed as scheduled. The filing and service of the Third Party Notice shall not affect either the relief sought by the Plaintiff in the March Application or the enforcement of the orders made after hearing the March Application.

Issues

[12] The issues to be determined on this application are:

- a) whether there is a genuine issue requiring a trial of this action or whether the plaintiff is entitled to summary judgment against the defendant;
- b) if there is a genuine issue requiring trial, whether the issue can be determined summarily by way of a summary trial pursuant to Rule 9-7; and
- c) If there is a genuine issue in this action that can be determined by way of a summary trial, the issue to be determined is whether the plaintiff is entitled to a judgment against the defendant in the amount of the Deposit paid to him under the Second Assignment Agreement.

Law

[13] The test for summary judgment is set out in Rule 9-6(5) of the *Rules* as follows:

- (a) if satisfied that there is no genuine issue for trial with respect to a claim or defence, must pronounce judgment or dismiss the claim accordingly,
- (b) if satisfied that the only genuine issue is the amount to which the claiming party is entitled, may order a trial of that issue or pronounce judgment with a reference or an accounting to determine the amount,
- (c) if satisfied that the only genuine issue is a question of law, may determine the question and pronounce judgment accordingly, and
- (d) may make any other order it considers will further the object of these Supreme Court Civil Rules.

[14] The purpose of the summary judgment is to promptly and inexpensively weed out and prevent meritless claims or defences from proceeding to trial: *Balfour v.*

Tarasenko, 2016 BCCA 438 at para. 41. The essential question to determine on the appropriateness of the summary judgment application is whether the defendant is bound to lose. If so, summary judgment should be granted to avoid unnecessary waste of time and expense. At para. 42 of *Balfour*, our Court of Appeal held:

On a summary judgment application brought against a defendant, the essential question is whether the defendant is bound to lose. If so, summary judgment should be granted to avoid unnecessary waste of time and expense. Where the defendant relies upon an asserted defence to resist the application, that defence must be *bona fide* in nature. This means that the proposition of law upon which the defendant relies must have a *bona fide* foundation in fact: *North Vancouver (District) v. Babyeats Ltd.*, 2014 BCSC 890 at paras. 44 and 46; *Bank of Montreal v. Yow* (1986), 16 B.C.L.R. (2d) 249 at 253-255 (C.A.).

[15] Where the evidence presents conflicts, summary judgment is unlikely because the court's role is not to weigh evidence and make factual determinations. On a Rule 9-6 determination, the court must determine whether there is a *bona fide* triable issue. Uncorroborated “bald assertions” of fact, however, will not likely prevent a summary judgment, unless the facts in question are not within the asserting party's knowledge or control and there is a real possibility that they will be discoverable as the trial proceeds: *Balfour* at para. 42.

[16] Where there is a factual dispute in the pleadings, summary judgment will not necessarily be precluded. It is the evidence and whether there are or not conflicts in the evidence that require genuine triable issue that will be determinative of whether or not the summary judgment is appropriate: *McLean v. Law Society of British Columbia*, 2016 BCCA 368, paras. 36–38:

[36] In my respectful view, the judge erred in principle in saying the rule was not available when there are disputed facts in the pleadings and in declining to consider the evidence on the Rule 9-6 application. In *Lameman*, the Supreme Court of Canada explained the importance of the summary judgment rule. This Rule has advantages to the administration of justice that are different from those provided by a summary trial such as we have long had in British Columbia. The court said:

10 This appeal is from an application for summary judgment. The summary judgment rule serves an important purpose in the civil litigation system. It prevents claims or defences that have no chance of success from proceeding to trial. Trying unmeritorious claims imposes a heavy price in

terms of time and cost on the parties to the litigation and on the justice system. It is essential to the proper operation of the justice system and beneficial to the parties that claims that have no chance of success be weeded out at an early stage. Conversely, it is essential to justice that claims disclosing real issues that may be successful proceed to trial.

11 For this reason, the bar on a motion for summary judgment is high. The defendant who seeks summary dismissal bears the evidentiary burden of showing that there is “no genuine issue of material fact requiring trial”: *Guarantee Co. of North America v. Gordon Capital Corp.*, [1999] 3 S.C.R. 423, at para. 27. The defendant must prove this; it cannot rely on mere allegations or the pleadings: *1061590 Ontario Ltd. v. Ontario Jockey Club* (1995), 21 O.R. (3d) 547 (C.A.); *Tucson Properties Ltd. v. Sentry Resources Ltd.* (1982), 22 Alta. L.R. (2d) 44 (Q.B. (Master)), at pp. 46-47. If the defendant does prove this, the plaintiff must either refute or counter the defendant's evidence, or risk summary dismissal: *Murphy Oil Co. v. Predator Corp.*, (2004), 365 A.R. 326, 2004 ABQB 688, at p. 331, aff'd (2006), 55 Alta. L.R. (4th) 1, 2006 ABCA 69. Each side must “put its best foot forward” with respect to the existence or non-existence of material issues to be tried: *Transamerica Life Insurance Co. of Canada v. Canada Life Assurance Co.* (1996), 28 O.R. (3d) 423 (Gen. Div.), at p. 434; *Goudie v. Ottawa (City)*, [2003] 1 S.C.R. 141, 2003 SCC 14, at para. 32. The chambers judge may make inferences of fact based on the undisputed facts before the court, as long as the inferences are strongly supported by the facts: *Guarantee Co. of North America*, at para. 30.

[37] In *Century Services Inc. v. LeRoy*, 2015 BCCA 120, we said concerning the differences between Rule 9-5 and 9-6:

[32] Century Services sought summary judgment pursuant to Rule 9-6, ... In making this submission it relies upon *Skybridge* ... I do not consider, as a general approach, that it is helpful to conflate the various rules. Rule 9-6 is a rule distinct from Rule 9-5; a challenge to pleadings is effected by Rule 9-5, whereas Rule 9-6 allows for the summary determination of a claim in a procedure that engages evidence but does not assume the character of a summary trial. [...]

[17] A party resisting summary judgment must put their best foot forward on the evidence and cannot “rely upon allegations in his [pleadings] to answer the evidence of the other side”: *Abby Pharmacy Ltd. v. Ghag*, 2021 BCSC 1402 at para. 15.

[18] The plaintiff's position is that there are no serious disputes on the facts and it is appropriate for the court to proceed by way of summary judgment.

[19] The defence position is that there is no fault on his part as to what occurred and prevented him from transferring title. He argues that the court should adjourn the hearing of this matter to occur following the time for response for the third party statements of response. It is not contested by the defendant that he has had the use of the \$100,000 since the time that the plaintiff paid it. It is also not in dispute that the defendant only paid a \$70,000 deposit (and thus \$30,000 less than what the plaintiff paid as a deposit), which would not form part of the action against the third parties. By way of a middle ground, the defendant suggested providing the plaintiff with \$30,000 now, to be held pending the resolution of the other matters between the defendant and the third parties.

Analysis

[20] Before the court, the parties had placed in evidence all of the relevant assignment agreements as well as that the Head Contract.

[21] Pursuant to the terms of the Second Assignment Agreement, the parties agreed that the title to the Property was to be transferred to the plaintiff by the latest completion date outlined in Head Contract being October 31, 2022. The contract set out that the Deposit shall be released to him and the assignment contract shall be terminated.

[22] The title to the Property was not transferred to the plaintiff on the latest completion date.

[23] The court was taken to the order approving the sale of the Property to a third party and consequently, the defendant is incapable of ever fulfilling his obligations under the Second Assignment Agreement. The defendant has breached the terms of the Second Assignment Agreement and, hence, the Deposit must be returned to the plaintiff. The defendant has had use of the \$100,000 since the Deposit was paid by the plaintiff. The issue of whether there is fault on the part of the defendant is not material to the contract as the fault in no way impacts on the plaintiff's agreement with the defendant.

[24] While there may be an issue to be determined between the defendant and a third party, that does not impact on the claim by the plaintiff against the defendant in this matter. I note further the terms of the consent order of the plaintiff entered into by the defendant, which set out that the third party notice would have no impact on the plaintiff's claim.

[25] The terms of the Second Assignment Contract and the Head Contract are unambiguous. The deposit was to be returned in the event that the contract could not be carried out. There is no genuine issue of material fact that requires a trial of this matter. The matter is appropriate to be determined by way of a summary judgment and it is unnecessary to have this matter determined by way of summary trial and consequently, I will not be addressing that argument as advanced by the plaintiff.

Conclusion

[26] In summary, I accept the plaintiff's submission that there is no genuine issue requiring a trial in this matter. The language of the Second Assignment Agreement and the Head Contract is clear and the defendant is incapable of fulfilling his obligations under the Second Assignment Agreement. The Deposit is returnable in accordance with the terms of the Second Assignment Agreement. The plaintiff, accordingly, is awarded the \$100,000 plus interest pursuant to the *Court Order Interest Act* as well as the costs of this matter.

Costs

[27] If the parties are unable to resolve the issue of costs, they may arrange to address costs by contacting Supreme Court Scheduling.

“Maisonville J.”