IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Mikszan v. Vetro,*
2024 BCSC 2433

Date: 20241206
Docket: S00950
Registry: Abbotsford

Between:

Elzbieta Mikszan

Appellant

And

Salvatore Vetro

Respondent

Before: The Honourable Justice Giltrow

On appeal from: An order of the Provincial Court of British Columbia, dated June 22, 2021 (*Mikszan v. Vetro*, Abbotsford File No. C24072, C24198)

Oral Reasons for Judgment

The Appellant, appearing in person:	E. Mikszan
The Respondent, appearing in person:	S. Vetro
Place and Dates of Hearing:	Abbotsford, B.C. December 5 and 6, 2024
Place and Date of Judgment:	Abbotsford, B.C. December 6, 2024

[1] **THE COURT:** I am going to deliver my oral reasons for judgment in this case. In an effort to provide a prompt resolution to the parties, recognizing how long this has been going on, I am providing oral reasons for judgment. If a transcript is ordered, I may edit these for clarity, but the reasoning and the result will not change.

[2] This is an appeal from the order of Provincial Court Judge Whyte following a three-day trial in June 2021. The trial arose from two separate claims filed by the plaintiff (the appellant in this case); one filed February 25, 2020, seeking compensation for breach of the respondent's commitment to a long-term lease with the appellant, seeking $35,000 to secure her house for a long term. I am going to refer to that as "the lease claim".

[3] Another claim was filed March 9, 2020, seeking compensation of $35,000 for the value of a 2018 Toyota RAV4 vehicle that the appellant alleges the respondent purchased for her in exchange for the work she had done for him and help she gave him in his career beginning in 2016. I am going to call that "the vehicle claim".

[4] The respondent filed the counterclaim, in which he sought an order that the appellant sign over her interest in the vehicle to him and that she return personal items that he claims he left in the suite when the relationship ended.

[5] At the end of the three-day trial, Whyte P.C.J. dismissed the appellant's claims for breach of contract and unjust enrichment; dismissed what he viewed as the appellant's claim that the vehicle was a gift; and found that the vehicle's legal and beneficial interest rests solely with the respondent.

[6] He ordered that the appellant shall take whatever steps are necessary to have the vehicle title transferred into the respondent's name alone. He ordered that she would, from that time, have 30 days from that date to do so; and, if the appellant failed to take the necessary steps to transfer the vehicle title into the respondent's name alone, within 30 days of the date of judgment, the appellant would pay forthwith to the respondent $10,000, reflecting what Whyte P.C.J. considered to be, on the evidence, the approximate one-half interest in the value of the vehicle.

[7] He further ordered that the respondent should pay forthwith to the appellant $6,000 for breach of contract, reflecting her increased rental costs associated with the renovation of the suite; and he held that the respondent's counterclaim was dismissed.

[8] On appeal, the scope for appellate intervention from the Small Claims Court is narrow. The appeal court is limited to determining whether the trial judge made an error of law or a serious error in making their findings of fact. The court must find, on a finding of fact, that the judge was clearly wrong, both with respect to the facts and the law. It is a very circumscribed authority of a court sitting in appeal to intervene with a trial judgment below.

[9] I will deal first with the jurisdiction question. The appellant has amended her notice of appeal to assert that the trial judge made an error of law by hearing the two claims that the plaintiff filed together over the course of a single trial.

[10] The respondent advises that, at a pretrial conference with Whyte P.C.J. in the weeks before the beginning of trial, it was determined that the two separate civil claims would be heard together in a single trial. The respondent advises that the plaintiff was accompanied by legal counsel at that pretrial conference.

[11] The appellant advises that she was not represented by counsel, but that David Klein was assisting her from time to time with her claim. She acknowledged on appeal that Mr. Klein did attend some pretrial matters on her behalf and does not remember if he attended the particular pretrial conference at which it was determined that the two claims would be heard over the course of a single trial.

[12] The appellant did confirm at the hearing of this appeal that no objection was raised by either party to proceeding in this matter at any time before or during the trial.

[13] Judge Whyte also notes in his reasons for judgment that, despite the fact that the claims arise in the context of the personal romantic relationship of the parties, which was on and off between 2016 and 2019, the appellant confirmed at the outset

of trial that the small claims were not a family law claim. This was important to confirming that the matter could proceed in Small Claims Court, which was the Court in which she had filed her claims; and it was on that basis that the trial judge satisfied himself that he had jurisdiction to hear both claims. This is at para. 16 of the reasons for judgment.

[14] The *Small Claims Act*, R.S.B.C. 1996, c. 430 [*Act*] grants the Provincial Court jurisdiction in claims for debt or damages, recovery of personal property, specific performance of an agreement relating to personal property or services, or relief from opposing claims to personal property if the amount claimed or the value of the personal property or services is equal to or less than an amount that is prescribed by regulation, excluding interest and costs.

[15] And the Small Claims Court monetary limit regulation sets that prescribed amount at $35,000.

[16] Both parties raised s. 7.1 of the *Small Claims Rules*, B.C. Reg. 261/93. Section 7.1(1) was raised by the appellant and s. 7.1(4) was raised by the respondent. Section 7.1(4) deals with multiple claims:

> If more than one claimant has filed a notice of claim or a notice of civil resolution tribunal claim against the same defendant or defendants with respect to the same event, or if one claimant has filed notices of claim or notices of civil resolution tribunal claim against more than one defendant with respect to the same event, [then, in such a case] the judge may
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> (a) hear at one time evidence that relates to all the claims,
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> (b) apply that evidence to all the claims, and
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> (c) make a decision in each of the claims,
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> even though the total monetary outcome of all . . . claims . . . is likely to exceed $35,000.

[17] I do not find that this section has application to the case before me, as this case involves only one claimant and one defendant. However, that does not necessarily answer the question as to whether the trial judge had discretion to direct that the two distinct claims filed by the claimant be heard over the course of the same trial.

[18] There was no allegation or suggestion by the respondent or the Court that the appellant was claim splitting in order to come within the jurisdiction of the Small Claims Court. She filed two distinct claims; one relating to outstanding obligations she said that she had incurred under a long-term lease and one relating to her claim for the vehicle based upon the work she had done for the respondent.

[19] Having chosen to file her claims in Small Claims Court, the appellant had attorned to the jurisdiction of the Court and the legislation and rules governing it. Those include s. 2 of the *Act* which provides the purpose of the *Act* and says, at:

> 2(1) The purpose of this Act and the rules is to allow people who bring claims to the Provincial Court to have them resolved and to have enforcement proceedings concluded in a just, speedy, inexpensive and simple manner.
>
> (2) Subject to this Act and the rules, in conducting a hearing the Provincial Court may make any order or give any direction it thinks necessary to achieve the purpose of this Act and the rules.

[20] Again, the purposes of the *Act* and the rules are to ensure that matters can be resolved and concluded in a just, speedy, inexpensive, and simple manner.

[21] It appears that the trial judge determined that hearing the two claims together was appropriate to resolve them in a just, speedy, inexpensive, and simple manner. In my view, he had the discretion to do so under s. 2 of the *Act*, and I have been pointed to no law or authority to demonstrate that he made an error in law in doing so. I would, accordingly, dismiss this ground of appeal.

[22] The appellant alleges further errors, which are listed in her notice of appeal and summarized at the hearing of the appeal, generally as that the trial judge misinterpreted evidence and failed to find instances of fraud, perjury, and forged documents.

[23] The trial judge heard evidence over three days of trial. In dealing with the lease claim, he determined that the issue to be decided was, "Is the claimant entitled to compensation for her increased rental costs as a result of the defendant breaching his promise to cohabitate with her?".

[24] In dealing with the vehicle claim, he determined that the issue to be determined at trial was, "Does the claimant have a claim, in either breach of contract or unjust enrichment, for services rendered to the defendant during their romantic relationship?".

[25] At the outset of his reasons for judgment, the trial judge set out the further two questions for analysis with respect to this claim of breach of contract or unjust enrichment, where he considered that he had to further ask whether the claimant is entitled to have the vehicle transferred to her either on the basis of contract or unjust enrichment or, alternatively, as a gift from the defendant.

[26] On appeal, the appellant says that she did not seek a remedy of transfer of the vehicle to her. Rather, she sought monetary compensation, being $35,000, in lieu of the value of the vehicle. She also says on appeal that she did not allege that the vehicle was a gift at trial.

[27] It is true that the appellant's notice of claim does not seek transfer of the vehicle, nor does she allege in the notice of claim that it was a gift. Whether the allegation was made in testimony or not I need not determine. The fact that the trial judge considered these questions was not prejudicial to the appellant, and I find no reversible error in him having done so.

[28] The first question was determined definitively by his comprehensive analysis as to whether the plaintiff had a claim in either contract or unjust enrichment for services rendered, and the definitive conclusion is in his reasons for judgment at para. 66.

[29] The question of gift was a further alternative legal basis upon which the plaintiff's claim to the vehicle may have been grounded. It would have been to the benefit of the appellant, who was not represented by counsel at trial, if relief could have been awarded to her under the doctrine of gift. Ultimately, the trial judge found that the gift was not established on the facts. The appellant's claim was, however, not prejudiced by the analysis.

[30] The trial judge provides, in the reasons for judgment, a thorough review of the evidence he considered in determining the issues before him. Much of the evidence summarized in the reasons for judgment is evidence I was taken to by the appellant in this appeal.

[31] For example, I was taken to a series of emails demonstrating the appellant's efforts to assist the respondent in his modelling career. The passages the appellant emphasized on appeal are quoted in the trial judge's reasons for judgment. He held that nothing in these emails resembles an agreement, and that is at para. 19. I see no error in that conclusion.

[32] The judge went on to consider all of the written material that was presented to him, and ultimately found that there was no written contract between the parties. Again, I see no error in that conclusion.

[33] He then went on to consider whether the evidence supported finding that an oral agreement had been made between the parties. On appeal, the appellant emphasized that the law recognizes oral agreements as binding agreements. That is not a point in dispute. The issue is that, at trial, the trial judge did not find that an oral agreement had been made between the parties. He held, "I do not find that there was a meeting of the minds outlining the nature, terms, or length of any agreement for the claimant to work as the defendant's media manager".

[34] He went on to list the three factors that he considered to be relevant to that determination. These are set out at para. 50 of his reasons for judgment; and I will read from them, because they were key to his reasoning. He found:

> 1. The allegation of breach of contract came to light only when the relationship between the parties was strained or broken. This occurred first in October 2017, and again later when the relationship terminated in November 2019. This fact does not support the conclusion that a verbal agreement existed prior to the development of difficulties in their relationship.
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> 2. There is no indication that the Defendant accepted an offer for services. In fact, the Defendant's evidence was that, upon receiving the Claimant's October 14, 2017 email, he directed her to “cease and desist” any and all activity regarding his social media accounts.

> 3. The Claimant's position was that the contract was breached when the relationship ended, at which time compensation became due and owing. This is inconsistent with “a meeting of the minds” regarding the essential terms of a contract. Were such an agreement found to exist, it would in effect bind the Defendant for the rest of his life. What if their relationship terminated in 20 years? Would the Claimant be due hundreds of thousands of dollars in remuneration without providing a single invoice for “services rendered”? I find it inappropriate to endorse a "qualified contract" where compensation becomes due only upon the termination of a romantic relationship.

[35] The trial judge thus concluded that there was no enforceable agreement between the parties, and thus the claim for breach of contract was dismissed.

[36] I see no reversible error in the judge's conclusions of fact or his legal analysis in coming to that conclusion. Similarly, no error in fact or law has been established in the trial judge's conclusion with respect to unjust enrichment.

[37] The appellant does not argue that the trial judge erred in his determination that the car was not a gift, because she says she did not allege it was a gift. I do note that the applicant took me to the same evidence of the defendant choosing a white car to accord with her wishes, as evidence of his intentions to give her the car. The trial judge reviewed that evidence under the question of gift. I have considered it also under the question of contract and unjust enrichment, but it does not change my conclusion.

[38] The trial judge found, based upon the defendant's testimony, that the purpose for which he put her name on the vehicle title was to assist the claimant in her application for classic car status for her Mercedes. The defendant testified that this made the Mercedes eligible for a reduced insurance rate by having another vehicle registered in the appellant's name.

[39] This is a significant example of the perjury that the appellant alleges. She points to a different reason alleged by the defendant in pleadings. However, the only testimony I was brought to was as I have described it above, and it was clearly open to the trial judge to prefer the defendant's testimony on this point. I have seen nothing that approaches the serious charge of perjury, and nor do I see anything that

meets the much lower standard of palpable and overriding error of fact. Accordingly, I do not see reversible error in either of these alleged grounds of appeal.

[40] I will deal now with the lease claim. The trial judge found that the essence of the agreement between the parties, that is between the appellant and the respondent, was set out in the written proposal that the two parties sent to the landlords.

[41] At para. 77, the trial judge held that the only reasonable conclusion to be drawn in these circumstances is that the claimant and defendant jointly agreed to live in the suite together for a one-year term. That is the agreement he found between the parties; and he said expressly he did not find evidence that the plaintiff and defendant agreed to live together for a period of six years and 10 months, which reflects the rental obligation that leads to the $35,000 claimed by the plaintiff.

[42] The landlords did respond to that email that came from the parties indicating their acceptance of an offer to increase the rent to $1500 a month in exchange for a renovation of the suite, on the basis that that commitment would be for a long-term tenancy. There was no evidence at trial that I was taken to—and I was taken to testimony and affidavit evidence—of what “long-term” means in that context, including whether or not it meant something other than the one-year lease.

[43] The appellant takes issue with the trial judge's finding that the defendant was a subtenant instead of a cotenant. Part of the trial judge's reasoning was that the landlords indicated their intention to deal directly and only with the appellant regarding matters relating to the tenancy. This was what they said in late November 2019 when the defendant offered to pay to have the suite returned to its original configuration at his costs. Had the landlords been willing to deal directly with the respondent and accept this offer, the subsequent conflict may not have ensued.

[44] I find no reversible error in the trial judge's reasoning or conclusions respecting the defendant's liability for increased rental costs based upon the breach of his promise to cohabitate with her. I would accordingly dismiss this ground of

appeal. Accordingly, I find no reversible errors in the appeal and I would dismiss the appeal on all grounds, with costs awarded against the appellant on a regular scale.

[45] I will deal with the further issue, which is that the respondent has asked that, in this appeal, that the appellant be declared a vexatious litigant. There is evidence of extensive back and forth between the parties and proceedings that have been determined to be *res judicata* and unnecessary. However, the appellant has assured me that she does understand that the appeal is the path for challenging the decisions of the Court below. I have rendered my decision in the appeal. I do not see the need to declare the appellant a vexatious litigant, given the exchange we have had in the proceeding and given my ruling today.

[46] However, I am going to order a transcript of my reasons for judgment. They will be provided to the parties; and, if there are any subsequent applications that are made that give rise to the need to draw these reasons to the attention of the Court, the respondent will have them; and this is without prejudice to any future ability to bring an application for vexatious litigant status. But to be clear: I do not find, as of today, that the appellant has been a vexatious litigant.

[47] That concludes my reasons for judgment. Now, actually, that does not quite conclude my reasons for judgment.

[48] Mr. Vetro, I asked if you had with you a vehicle transfer form.

[49] SALVATORE VETRO: Yes, I did get them.

[50] THE COURT: We are here today; the reasons stand; the order from Whyte P.C.J. has been in place for three and a half years now. So, I am going to direct you, Ms. Mikszan, to sign the transfer forms today as we sit here, then I do not need to make an order, and we can close off that portion of this dispute that has been lingering for too long.

[51] So, Mr. Vetro, can I get you to hand the transfer form to Ms. Mikszan. And, Ms. Mikszan, I am going to ask you to execute it now.

[52] SALVATORE VETRO: She has to sign in two places. Sign there. And you have to put your driver's licence in there. And there was one other one. Let me get my glasses here. Then you have to sign right here. So, one signature, two signatures, and your driver's licence on the transfer form. Just below my name.

[53] ELZBIETA MIKSZAN: Can I please have space?

[54] THE COURT: Yes. Thank you, Mr. Vetro.

[55] SALVATORE VETRO: Yeah.

[56] ELZBIETA MIKSZAN: Thank you.

[57] SALVATORE VETRO: Also, Your Honour, about the RAV4 fob?

[58] THE COURT: Yes. Ms. Mikszan, do you happen to have the fob with you?

[59] ELZBIETA MIKSZAN: No, I do not.

[60] THE COURT: Okay.

[61] ELZBIETA MIKSZAN: I will deal with that properly, yeah.

[62] THE COURT: I am going to direct that you send the fob to Mr. Vetro through secure mail. Well, I guess right now, while we are in the Canada Post strike if you could, by courier, please send Mr. Vetro the fob forthwith, and certainly have it arrive by the end of next week.

[63] THE COURT: So that concludes my reasons.

"Giltrow J."