

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Kikla v. Ayong*,
2015 BCSC 2067

Date: 20151112
Docket: S172166
Registry: New Westminster

Between:

Sunanda Kikla, Fraser Valley Community College

Plaintiffs

And

**Moses Aseh Ayong, Yvette Enni Ayong, Elias Fokwak Ayong,
Richard Dabila, Vandana Khetarpal, Grace Eghonghon Omonua,
Paul Akhere Omonua, Canada International Career College Inc.,
Emily Pitcher, Claire Dollan**

Defendants

Before: The Honourable Mr. Justice A. Saunders

Reasons for Judgment

Appearing on her own behalf and on behalf
of Fraser Valley Community College:

The Plaintiff, S. Kikla

Counsel for Private Career Training
Institutions Agency, E. Pitcher and C. Dollan:

C. Hunter

Appearing on his own behalf:

The Defendant, P. Omonua

Counsel for S. Conteh, defendant in related
Action No. S171964:

M. Maynes

Place and Date of Hearing:

New Westminster, B.C.
November 6, 2015

Place and Date of Judgment:

New Westminster, B.C.
November 12, 2015

Introduction

[1] In the present action, and two related actions, motions to dismiss the plaintiffs' claims are scheduled to be heard together on November 25 – 27, 2015. Interlocutory proceedings in those actions have been stayed until such time as those motions are dealt with. This is all as a result of orders made by Joyce J. on July 10, 2015 and by Fisher J. on July 29, 2015.

[2] The plaintiffs now move before me – as Case Management Judge – to have those orders set aside.

[3] The also seek what they maintain is further ancillary relief in respect of ongoing administrative proceedings between the plaintiff Fraser Valley Community College Inc. ("FVCC"), and the Private Career Training Institutions Agency (the "Agency").

Background

[4] FVCC is the plaintiff or petitioner in several matters before this Court, which, in broad terms, arise out of the regulation of FVCC by the Agency. FVCC is represented in these matters by its proprietor, Ms. Sunanda Kikla, who is also named as a plaintiff individually in the present action and in two other actions (New Westminster Registry Nos. S171964 and S172005).

[5] On July 10, 2015, the Agency brought on for hearing applications under Rule 9-5(1) to strike FVCC's claims. The applications were brought in two Petitions (New Westminster Registry Nos. S17180 and S171801), and actions Nos. S171964 and S172005. After hearing from the parties the application judge, Mr. Justice Joyce, decided that the matter needed more time for argument, and that the parties would have to start over again before another judge of the Court.

[6] Mr. Justice Joyce held that the four applications were to be re-set for two full days of hearing.

[7] He also ordered that with respect to the two actions there would be a stay of all interlocutory proceedings until the Agency's application to dismiss had been heard and determined.

[8] FVCC and the Agency were unable to agree on the form of the July 10 order, and ultimately the order was settled by Master Caldwell on September 8, 2015. FVCC, although duly served, did not attend that hearing.

[9] FVCC has not appealed the July 10 order.

[10] The Agency then brought on another application to strike, this time in Action No. S172166. That application was set to be heard before Madam Justice Fisher on July 29, 2015.

[11] The parties corresponded beforehand as to the desirability of that application being adjourned, to allow – among other things – for the preparation of a transcript of the July 10 hearing. There was also correspondence between the parties as to the terms of an adjournment of the application, which the parties ultimately were unable to agree upon. The matter came on for hearing before Fisher J. on July 29th. Ms. Kikla did not attend as she was ill that morning.

[12] Counsel for the Agency apprised Fisher J. of FVCC's objections to the adjournment terms that the 'Agency had proposed.

[13] Madam Justice Fisher adjourned the application to strike, and held that the application was to be re-set, to be heard together with the applications in the other four proceedings that had been dealt with by Joyce J. She further ordered that no interlocutory steps were to be taken in that action until the application to strike was determined – essentially, making an order parallel to that made by Joyce J.

[14] FVCC did not appeal from that July 29 order. Ms. Kikla advised the Agency's counsel later that same day of her intention to appeal, but she took no steps to do so. She further communicated with counsel on August 19, 2015, that she would be

filing an application for variation of the terms of the July 29 order, but she took no steps to do so until October.

[15] The Agency has, since then, advised the plaintiffs that it does not intend to proceed with its applications to strike the two Petitions. The applications to have the three actions struck dismissed, as against the Agency and its employees, remains set to be heard later this month.

[16] By way of the present Notice of Application, filed October 28, 2015 in Action No. 172166, FVCC has sought a variety of forms for leave, including interpretation of the order of Joyce J. and vacating of the order of July 29 on the grounds that it was obtained on the basis of the Agency's misrepresentation to the Court of the true facts, and misrepresentation of the nature of the order of July 10, (the latter order not having been entered, and no transcript then being available of the proceedings on July 10 nor of the oral reasons of Joyce J.).

[17] The hearing of this present application was anticipated during the course of an earlier Judicial Management Conference heard before me on October 22, 2015, just after these matters had been assigned to me for case management. Since then – on Monday, October 26, 2015 – it appears that the Agency cancelled the registration of FVCC as an educational institution. FVCC has not, at the present time, filed any petition, or sought any amendment of any of its existing petitions, to seek judicial review of that October 26th decision. Nevertheless, in the application before me today, the plaintiffs have sought a number of additional remedies, going beyond the subject matter of the orders of July 10 and July 29; they are seeking a number of interlocutory orders which Ms. Kikla submits are necessary to allow FVCC to pursue its internal appeal of the Agency's October 26th cancellation decision.

[18] Following the October 26th decision, Ms. Kikla engaged in a lengthy – and inappropriate – correspondence with the Court's schedulers and with one of the Court's law officers, advising that she was intending to seek an interlocutory injunction staying the effect of the Agency's October 26 order, and that the matter would need to be heard by the Court on an urgent basis.

[19] At that point in time, November 6th had been set aside for hearing FVCC's application concerning the orders of July 10 and July 29. At my direction, the Court's schedulers advised Ms. Kikla that those would be the only matters to be dealt with on November 6th.

[20] The plaintiffs proceeded to file the present application seeking multiple forms of relief. The application was not served in time to proceed on November 6th. Counsel for the Agency advised Ms. Kikla that they would not object to the late service of the application in respect of the arguments surrounding the orders of July 10 and July 29 orders, but that objection would be taken to the other forms of relief being sought.

[21] The parties sought direction from the Court. I provided the parties with a memorandum giving directions, on October 30, 2015. I confirmed that the present hearing would deal only with paras. 2-5, 9 and 10 of the Notice of Application. I confirmed my understanding that FVCC had indicated its intention to have the Court consider the validity of the October 26th cancellation of FVCC's registration. I commented that the cancellation was a new development, potentially providing FVCC with a new cause of action, and was not before the Court at the present time. I noted that FVCC might wish to seek judicial review of that October 26th decision, and that judicial reviews are to be heard by petition, pursuant to the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241. I noted that FVCC might wish to consider seeking amendment of one of the petitions currently underway, or filing a new petition, in order that the subject matter of the October 26th cancellation could be before the Court. I further noted that s. 10 of the *Judicial Review Procedure Act* makes provision for the hearing of applications for interim orders, and that FVCC might wish to consider bringing such an application in a petition that is directed to the October 26th cancellation.

[22] To date, FVCC has not moved to seek judicial review of the October 26th decision. Ms. Kikla advised, during the course of her submissions, that she wishes to first exhaust her internal rights of appeal, in accordance with the Agency's bylaws.

[23] During the hearing, Ms. Kikla asked that the Court rule on the remaining paragraphs of the application, so that she can consider whether an alternative course of action will be pursued.

[24] I will therefore deal generally with those other forms of relief raised in the Notice of Application.

Applications for Ancillary Relief

[25] The plaintiffs seek the following orders:

1. The Applicants seek the order for grant of Leave to bring this application on short Notice;
- ...
6. Determination if 1st Amended Notice of Claim filed on Oct 2, 2015 is admissible in this action;
7. That the court should determine the appropriate action for the conduct of legal Counsel Claire Hunter for misrepresentation and misleading the Honorable court of Madam Justice Fisher on July 29, 2015 to seek the order obtained during the hearing of July 29, 2015;
8. That the court should determine the appropriate action for the conduct of the legal Counsel Heather Cochrane for misrepresentation and misleading the Honorable court of Justice Joyce on July 10, 2015 to seek the order obtained during the hearing of July 10, 2015;
- ...
11. That Interlocutory order obtained against the defendants be stayed and a discovery be permitted to obtain in this matter from all defendants;
12. That interlocutory order obtained against the defendants Paul Omonua be stayed and a discovery be permitted to obtain in this matter as the defendant in his response filed had already accepted and agreed for providing the required evidence under oath;
13. That interlocutory order obtained against the defendants Vandana Khetarpal and other defendants be stayed and a discovery be permitted to obtain in this matter as this will allow the plaintiff to bring critical matters of this case to light;
14. That plaintiff is permitted to discover Richard Dabila of Banque Atlantique in Cameroon to obtain critical evidence essential to this matter. Defendant Richard Dabila has already been dismissed from his job with Banque Atlantique in Cameroon as subsequent to the plaintiff filing this action, the Bank in Cameroon Investigated the matter and found the defendant Richard Dabila Responsible for Fraudulent bank statements and the Bank has initiated a court action in Cameroon against the Defendant and his other accomplices in this matter;

15. That Banque Atlantique in Cameroon be added as an additional defendant in this matter;
16. An interlocutory Stay to the effect of the Oct 26, 2015 decision made by the defendant PCTIA and Monica Lust to Cancel the Registration of the plaintiff Fraser Valley Community College till the matter in 171801,171964,172005 and 172166 has been determined;
17. Alternatively An interlocutory Stay to the effect of the Oct 26, 2015 decision made by the defendant PCTIA and Monica Lust to Cancel the Registration of the plaintiff Fraser Valley Community College till the Application to Strike in the matter in 171964,172166 and 172005 has been determined which is currently Scheduled to be heard on Nov 25- Nov 27, 2015;
18. The defendant Monica Lust and PCTIA be found in contempt of the Current Terms of the entered Order of Justice Fischer and Justice Joyce for hearing held on July 29,2015 and July 10,2015 respectively;
19. That the court should determine the costs of this application;
20. Such further and other relief as this Honourable Court may deem just.

[26] With respect to para. 6 of the Notice of Application, Ms. Kikla was advised during the hearing that “admissibility” applies to evidence, not to pleadings. The First Amended Notice of Civil Claim was filed by her – improperly – when the stay of proceedings was in effect. Once the stay has been lifted or terminates, FVCC may proceed to serve that amended pleading. No steps will be taken in respect of that amended pleading, until such time.

[27] Neither the Notice of Application itself, nor the voluminous materials filed in support (including a 1001 page affidavit sworn by Ms. Kikla – only one of several affidavits she had filed in these proceedings) disclose any urgency to the application which would justify short notice. The relief sought is sufficiently complex that the notice required by the Rules, at least, would be needed by the parties to respond properly to the application.

[28] Moreover, aside from the issues raised by the applicant in respect to the orders of July 10 and July 29, neither the application nor the material filed in support disclose any urgency which would justify the stays of proceeding being lifted. Ms. Kikla submits that the relief sought in respect to proceeding with the discovery of the defendants Omonua, Khetarpal and Dobila is urgently required to enable FVCC

to pursue its internal appeals with the Agency in respect of the October 26th cancellation. However, as I have previously stated, there is no proceeding before the Court in which that cancellation is contested.

[29] Finally, with regard to para. 18 of the Notice of Application, FVCC confuses the Agency's ongoing statutory obligation to regulate educational institutions, with the proceedings before the Court. The stay of proceedings has only affected the latter, in respect of the three aforesaid actions. No order has been made barring the Agency from pursuing its mandate.

[30] These are but a few of the apparent defects and deficiencies in the Notice of Application in respect of those paragraphs. Those portions of the Notice of Application are dismissed, without prejudice to the plaintiffs' right to seek similar relief in a properly filed application.

Applications re: the Orders of July 10 and July 29, 2015

[31] In respect of the July 10 and July 29, 2015 orders of this Court, FVCC seeks the following:

2. That the order of Justice Fisher of July 29, 2015 be set aside and or Varied as it was obtained by stating incorrect facts to the court;
3. That the Terms of the order for July 10, 2015 hearing held with Justice Joyce be determined based on the Transcript and a further clarification or directions be obtained regarding the correct terms of the order for hearing date of July 10,2015 heard with Justice Joyce;
4. That the Terms of the order for July 29,2015 hearing held with Justice Fischer be determined based on the Transcript of July 10,2015 hearing and the terms of the order granted by Justice Joyce;
5. That further clarification or directions be obtained regarding the correct terms of the order for hearing date of July 10, 2015 heard so that the interlocutory stay granted for 171800 and 171801 may be further addressed and determined;
- ...
9. To address and determine the correct version of the Terms of the order for the July 10, 2015 hearing held with Justice Joyce which dealt with 4 case files which included two petition file 171800 and 171801 and two actions with File number 172005 and 171964;
10. To address and determine the correct version of the Terms of the order for the July 29, 2015 hearing held with Justice Fischer which was to deal

with the Action File number 172166 and the orders were obtained for petition file 171800 and 171801 and two actions with File number 172005 and 171964 in addition by claiming a false presentation of Justice Joyce Order of July 10, 2015 which had not been entered at the time of hearing held on July 29, 2015.

[32] With regard to para. 5 of the Notice of Application, Ms. Kikla appears to have been proceeding on the misunderstanding that a stay of proceedings was granted in respect of the petitions, Nos. S171800 and S171801. As was pointed out to her during the hearing, that is not what the orders say. The stay of proceedings is not a bar to FVCC moving to amend, or seek liberty to amend, the Petitions or to pursue any interim remedies available to it in respect of same.

[33] Part 2 of the Notice of Application repeatedly refers to the July 10 and July 29 orders as having been obtained *ex parte* or “in default”. This is a complete mischaracterization of what transpired. The plaintiffs were served with notice of both hearings. Ms. Kikla appeared and made submissions before Joyce J. on the July 10th hearing. On the July 29th hearing, counsel for the Agency put the plaintiffs’ position before the Court. I have reviewed the transcripts of both hearings. The transcript of the July 29th hearing does not disclose any misrepresentation of the plaintiff’s position.

[34] In respect of the July 10th hearing, Ms. Kikla invites me to look behind the entered order and consider whether the transcript discloses Joyce J. having made an order in the form in which it was entered. No Rule permits me to look behind an entered order. FVCC was given notice of the hearing to settle the terms of that order, and chose not to attend or seek an adjournment of the hearing. I am, in any event, completely satisfied that the form of the order reflects fully what was said and what was intended by Joyce J.

[35] To some extent, the submissions made by Ms. Kikla in respect to the July 10th hearing are tantamount to a re-arguing of her position. If Ms. Kikla was unhappy with the result of the July 10th hearing, her remedy was to appeal. She chose not to do so.

[36] Ms. Kikla further makes very grave allegations of counsel for the Agency having misled the Court on the July 10th hearing. The substance of FVCC's grievance in that regard appears to lie in the manner in which counsel for the Agency characterized the two petitions and the two actions as involving similar issues. My review of the transcript reveals nothing inappropriate and nothing misleading in the substance of counsel's submissions. Ms. Kikla addressed the Court, and attempted to persuade Joyce J. of the dissimilarities between the actions. Mr. Justice Joyce appears to have concluded that the matters – and the applications to strike – were so substantially similar that the strike applications ought to be heard together. I agree with his conclusion. From a case management perspective, the terms ordered respecting the adjournment made eminent good sense.

[37] The plaintiffs make similar submissions in respect of the July 29th hearing. My review of the transcript discloses only one misstatement made by counsel for the Agency, when – and I think it is fair to say she did nothing more than misspeak herself – she referred to the order of Joyce J. as having stayed all four of the matters before him, rather than, as was the case, simply the two actions. Nothing could have turned on this. The order made by Fisher J. was also eminently sensible.

[38] The plaintiffs' application in respect of the orders of July 10 and July 29, 2015 is dismissed.

Costs

[39] The Agency seeks costs of this application to be assessed as special costs in any event of the cause. Two bases for this position are put forward.

[40] The first is that Ms. Kikla misconducted herself in respect of setting a previous version of the present application. The hearing of that application was originally set for October 5, 2015. FVCC did not file an application record or appear, and when the Agency's employees appeared before the Court on October 5th, the Agency and its employees were awarded costs of their unnecessary appearance in the amount of \$500. That same day, Ms. Kikla emailed scheduling, requesting that the application originally set to be heard that day be heard instead on the following day,

October 6th. She was advised by scheduling that the matter could be added to the Chambers list, but Ms. Kikla would require either the other side's consent of short notice. Ms. Kikla replied that she was "sure the other party will not consent as they want to delay the matter and get the matter heard in Vancouver on 7-9 Oct 2015 so I will Opt for Short Notice...".

[41] On October 6, 2015, counsel for the Agency's employees wrote to Ms. Kikla, advising that their clients did not consent to the application being re-set on short notice. Despite this, on October 6, 2015 FVCC filed a requisition re-setting their application to October 6th, falsely representing on the requisition that it was filed "by consent".

[42] Ms. Kikla submitted that this was due to a misunderstanding of her position on the part of Registry staff. No evidence has been filed by Ms. Kikla to that effect. I am not able to resolve the doubts I have as to what transpired; I will not find Ms. Kikla liable for special costs on this basis, but I remind her that she is responsible for all materials filed with the Registry. She must be scrupulously careful not to misrepresent the positions of other parties with respect to scheduling issues.

[43] The more substantial basis for the application for special costs is Ms. Kikla's repeated assertions of counsel for the Agency having engaged in misconduct before the court. Today, as I write these reasons, I am in receipt of copies of further email communications from Ms. Kikla to Scheduling, including a letter in which these allegations of misconduct are repeated at length.

[44] There is quite obviously no substance whatsoever to the allegations made against the Agency's counsel. The submissions made by counsel for the Agency during the July 10th hearing went no further than to characterize the facts and issues in a manner that was favourable to their clients' position. That is what advocacy is all about. There was no misrepresentation. The Court was persuaded; it was not misled.

[45] In saying that the allegations against counsel were quite obviously without substance, I do not imply that counsel for the Agency have overreacted in asking that Ms. Kikla be sanctioned for this conduct, and I do not intend to minimize the gravity of Ms. Kikla's conduct. Proceedings before this Court depend on the integrity of counsel, and any attack on that integrity is an attack not only on counsel personally, but also on the very nature of the Court's proceedings. It is a very serious matter to make such unfounded allegations. I will excuse Ms. Kikla's conduct on this occasion on the basis that it appears to have stemmed from her failing to appreciate the role of counsel in advocating for their client.

[46] As these matters proceed, Ms. Kikla should be mindful of two pronouncements of our Courts. I have underlined particular portions of the passages below, for emphasis.

[47] In *Leger v. Metro Vancouver YWCA*, 2013 BCSC 2021, Mr. Justice Pearlman said:

[74] Special costs will be awarded in a range of circumstances. They will be awarded where a party makes resolution of an issue more difficult than it should have been, where a party pursues a meritless claim and is reckless with regard to the truth, or where a party makes unfounded allegations of fraud or dishonesty.

[75] Special costs may also be awarded where a party makes unfounded allegations concerning the professional integrity or conduct of opposing counsel: see *The Los Angeles Salad Company Inc. v. Canadian Food Inspection Agency*, 2011 BCSC 1558.

[76] I find that there has been conduct on the part of the plaintiff deserving of the court's rebuke. In particular, the plaintiff has engaged in a persistent attack on the integrity of defendants' counsel. Her communications with the defendants in which she has threatened criminal investigations and her repeated ignoring of requests that all of her communications with the defendants be through defendants' counsel also merit rebuke.

[77] I take into account the fact that the plaintiff is not represented by counsel and that her experience in the conduct of litigation is limited. However, the plaintiff's status as a self-represented litigant is not a licence to conduct herself as she sees fit or without regard to the *Rules of Court* or to make unfounded allegations of misconduct against opposing counsel.

[48] More recently, the latter point was confirmed by the Court of Appeal in *The Owners Strata Plan LMS3254 v. Sze Hang Holding Inc.*, 2015 BCCA 424:

[11] ... Self-represented litigants have no licence to employ accusations of dishonesty as a feature of their rhetoric unless such accusations are firmly grounded in the evidence, are relevant to the proceedings, and are responsibly made. By “responsibly”, I mean measured, careful, and faithful to the evidence. Self-represented litigants must understand that the court is not a free fire zone where anything can be said regardless of the harm to others and their reputations.

[49] FVCC and Ms. Kikla are put on notice that any future conduct of this nature on their part may well result in a significant sanction in the form of an award of special costs being made in any event of the cause.

[50] This application was completely without merit. The defendants who opposed the application will all be entitled to their costs, at Scale B, in any event of the cause, payable forthwith.

“A. Saunders J.”