

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Thomson v. A.R. Thomson Group*,
2016 BCSC 2268

Date: 20160919
Docket: S158569
Registry: Vancouver

Between:

Lisa Thomson

Plaintiff

And

A.R. Thomson Group

Defendant

Before: The Honourable Mr. Justice Grezell

On appeal from: An order of the Supreme Court British Columbia, dated
June 28, 2016 (*Thomson v. A.R. Thomson Group*, Vancouver Docket No. S158569)

Oral Ruling

In Chambers

Counsel for the Plaintiff:

D.H. Coles

Counsel for the Defendant:

A.J. Piercy

Place and Date of Hearing:

Vancouver, B.C.
August 25, 2016

Place and Date of Ruling:

Vancouver, B.C.
September 19, 2016

[1] **THE COURT:** These are my reasons in this matter. As they are oral, I reserve the right to edit them should a transcript be requested.

[2] This is an appeal from the order of Master Scarth made June 28, 2016, directing a representative of the defendant to answer questions at his examination for discovery relating to the nature of the business relationships between family members who were members through corporations in the defendant partnership.

[3] Specifically the questions related to the nature of the relationships between the partners: whether those relationships had become strained; whether the managing partner, Mr. Thomson, had in the course of the partnership had been falling out with any of his partners; whether since the creation of the partnership any partners had in his view done anything that had seriously damaged their relationship with their siblings; whether any of the partners since the formation of the partnership had refused to communicate with other partners and similar such questions set out in Appendix "A" to this application.

[4] To provide some brief background, and I take this background from the notice of application, the plaintiff, Ms. Lisa Thomson, commenced this litigation in October 2015 seeking an order for specific performance, reinstating what she says is her 15% partnership interest in the defendant A.R. Thomson Group.

[5] The defendant, which I will refer to "ARTG," is a partnership engaged in the business of manufacturing and distributing gadgets, seals and related products. Mr. Thomson, the defendant's representative who attended the examination for discovery and who was asked the questions referred to above, is the managing partner of ARTG. The business was founded in 1967 by Mr. Thomson.

[6] In 1997, ARTG was created to transfer ownership of the business amongst Mr. Thomson's children for tax and estate planning purposes. Originally the plaintiff's mother and father, along with the plaintiff's first siblings, each had an ownership interest in ARTG through companies owned and controlled by them. The plaintiff and each of her siblings received a 15% ownership in ARTG.

[7] The plaintiff's 15% interest was held by a corporation, which I will refer to as "the company", which prior to 2010 was owned and controlled by the plaintiff and her then husband through a holding company controlled by them. As a result of the breakdown of the marriage between the plaintiff and her then husband and allegations by ARTG that the husband had purchased a business that competed with ARTG, it is alleged that all of the partners in ARTG agreed the most expedient way to move forward was to remove Mr. Taylor from having access or input into the affairs of ARTG, and hence the company was removed from the partnership.

[8] In November 2009, Mr. Thomson made what is alleged to be an agreement with the plaintiff that in exchange for her cooperation in moving the company from the partnership, she would be reinstated as an equity partner when the litigation with the husband was resolved. The alleged agreement is the subject of the underlying litigation.

[9] The plaintiff says that since February 2010 when the company was removed from the partnership she has made various attempts to have her partnership interest restored in ARTG and that to date ARTG has refused to honour its agreement with her. The plaintiff seeks specific performance of the agreement and in the alternative damages for breach of contract.

[10] In its response to the notice of civil claim the defendant denies that the plaintiff was told by Mr. Thomson the defendant would restore her to a 15% interest in the partnership. In other words, the defendant denies the alleged agreement.

[11] Further in addition to a number of other defences raised, the defendant says at paragraphs 32 to 34 of its response to civil claim::

32. The relationship between the plaintiff, her parents and siblings was seriously damaged when her siblings discovered in September 2012, that the plaintiff was writing a blog in which she cast them, to their great embarrassment, in a false, misleading, and pejorative manner.

33. Since that time, the relationship between the plaintiff, her parents and siblings has continued to deteriorate such that, at the present time, the plaintiff refuses to communicate with her parents except by email and does not communicate with her other siblings in any manner except for [one]...

34. As a result of her actions the plaintiff has caused her father, mother and siblings to be justifiably concerned that if she was permitted to purchase an interest in the defendant, she would be disruptive and harmful to the business of the defendant.

[12] The plaintiff did not file a reply to the response to civil claim and as such the issues raised by the defendant in that response are presumed to be at issue in the matter at large. The plaintiff has not specifically denied the defendant's allegations. See *Certus Strategies (British Columbia) Corporation et al. v. Insurance Corporation of British Columbia*, 2005 BCSC 608.

[13] The standard of review on an appeal from a master on an interlocutory matter such as that before the court in this case is whether the master was clearly wrong, that is whether she misapprehended the evidence or made an error in law. *Dungate v. Dungate*, 2015 BCSC 2225, at paragraphs 31 and 32.

[14] Rule 7-2(18) of the *Supreme Court Civil Rules* provides that a person being examined on an examination for discovery must answer any question relating to a matter in question in the action. It is well established that the permissible scope of questions asked during an examination for discovery must relate to a matter in the action as defined by the pleadings, *Kendall v. Sun Life Assurance Company of Canada*, 2010 BCSC 1556, at paragraph 8.

[15] The scope of allowable questions is a broad one, *Cominco Ltd. v. Westinghouse Canada Limited*, [1979] B.C.J. No. 1963.

[16] I turn to Master Scarth's reasons. I have before me both a transcript of the hearing and her oral reasons for judgment given on the date of the hearing in chambers. It is clear to me from a review of both the transcript and her oral reasons that Master Scarth was alive to the legal principles she was to apply.

[17] At page 18 of the transcript, line 28, during the course of her discussion with counsel she said this:

So the question which then arises is what kind of -- what is the norm for this family? What is the -- what has this family tolerated in the way of disruptive behaviour in the past which makes that position untenable? And that is, it

seems to me, where your friend's questions were going. So in other words, if on cross-examination at trial Mr. Coles wanted to ask questions about the kind of sibling rivalry or interpersonal relationships which had happened in the past in this, it seems to me that that would be something that would be appropriate. And therefore it seems to me that it is appropriate on discovery because of the scope of discovery.

[18] At page 19 she said this:

Well, I am not sure that the issue of probative value comes into it. The question is whether it is relevant on the broad test of relevance that is applied to questions on discovery. So I think what you are saying is only her relationship with the family is relevant on the pleadings.

MS. PIERCY: Yes.

THE COURT: And it seems to me having reviewed the materials over the break and reviewed the discovery questions that that is too narrow a view of what is appropriate on discovery.

[19] In her oral reasons Master Scarth at paragraph 2 outlined the nature of the action. At paragraph 3 she outlined the claims set out in the amended notice of civil claim. At paragraph 5 she said:

I have been given the appendix with the list of questions that are objected to. I have already stated in the course of submissions that in my view the defendant's position that the plaintiff's behaviour was too disruptive for the family business makes the question of what is the norm for the family business relevant. That is, what behaviour is tolerated or considered not to affect the business of the company and as a result questions with respect to the relationship of other partners are relevant.

[20] She then went on to review each of the questions attached to Exhibit A, finding most to be relevant, qualifying others and finding two to be overly broad or irrelevant.

[21] I am in agree with Master Scarth's reasoning that the nature of the business relationships between the family members of ARTG are relevant to the defendant's ultimate position that reinstating the plaintiff to the family business, that is the granting of her claim for specific performance, would be disruptive and harmful to the defendant's business.

[22] The defendant's pleadings raise an issue as to what is the nature of the relationship between the plaintiff and her siblings. I refer specifically to paragraphs 32 and 33 of the amended response. In my view the defendant's pleadings also give rise to whether the defendant's decision not to reinstate the plaintiff to the partnership is a *bona fide* one and to its claim that specific performance of the agreement should not be granted should the agreement be found to be enforceable.

[23] Accordingly, I dismiss the appeal.

[24] Was the plaintiff seeking special costs?

[25] MR. COLES: Plaintiff sought special costs before Master Scarth.

[26] THE COURT: Yes.

[27] MR. COLES: She declined to order special costs and ordered costs to the plaintiff in the cause but in any event of the cause.

[28] THE COURT: Yes. I appreciate that was the order at the application before Master Scarth. Is the --

[29] MR. COLES: Oh, I am sorry, My Lord.

[30] THE COURT: Is the plaintiff seeking that order from this court?

[31] MR. COLES: Absolutely, My Lord.

[32] THE COURT: Yes. Well, I decline to grant special costs. In my view this is not the kind of case which engages or triggers the court's sanction for reprehensible conduct. In my view this is simply a case of hard fought litigation.

[33] In my view costs should be granted, however, in any event of the cause.

[34] Counsel, are there any matters I have not dealt with?

[35] MS. PIERCY: I just did not hear the last sentence that you said. Costs will be ordered in ...

[36] THE COURT: In any event of the cause --

[37] MS. PIERCY: In any -- thank you so much.

[38] MR. COLES: Thank you, My Lord.

[39] THE COURT: Thank you.

“Greyell J.”