

Citation: National Leasing v. Top West
Ventures et al
2001 BCSC 111

Date: 20010117
Docket: S005322
Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

NATIONAL LEASING GROUP INC.

PLAINTIFF

AND:

TOP WEST VENTURES LTD. and AEROCK SHANDLER

DEFENDANTS

AND:

DOUGLAS SYMES & BRISSENDEN

DEFENDANT
BY COUNTERCLAIM

REASONS FOR JUDGMENT

OF

MASTER BOLTON

(IN CHAMBERS)

Agent for the Defendants:

Mr. Naudi

Counsel for the Defendant by
Counterclaim:

G. Ritchey

Date and Place of Hearing:

December 11, 2000
Vancouver, BC

[1] This is an application by the defendant by counterclaim to dismiss the counterclaim on the ground that it discloses no reasonable claim.

[2] The plaintiff's action against the defendants is for a debt alleged due for a computer system and accessories. It is difficult to describe the nature of the defence or counterclaim.

[3] The counterclaim consists of 97 paragraphs, over 26 pages. It was apparently drafted by a friend of the defendant Mr. Shandler who has a somewhat idiosyncratic approach to English grammar. For instance, he has deconstructed the outline of the defendant by counterclaim prepared for this hearing, breaking it down into its constituent parts of speech. According to the helpful code he endorsed on the outline, the three personal names forming the title of the defendant law firm, Douglas Symes & Brissenden, are respectively an adjective, a pronoun and another pronoun.

[4] On the face of the document, I had difficulty discerning any cause of action while the matter was being spoken to in chambers, but in view of its length and complexity, I concluded that I should reserve my decision in order to consider it in more detail.

[5] The first paragraph reads:

1. For the [DE]FENDANT with the knowledge of the David-Wynn:Miller; Language-Procedures (<http://www.dwmlawprocedures.com>; <http://brucestellar.tsx.org>) is with the damage: damage by the utilization of the fictitious-language/scribble as the foundation for the authority for the action/claim against the DE[FENDANT] damage by the criminal-rate of the interest [section: 347: Criminal-Code of the Canada]; damage by the false-statements [section: 397.1(a); Criminal-Code of the Canada]; damage by the completion of a fraud: constructive or actual [section: 380.1 of the Criminal Code of the Canada]; damage by the completion of a mail-fraud [section: 381 of the Criminal-Code of the Canada; damage by the bad-faith; by the PLAINTIFF and DEFENDANT by the COUNTER-CLAIM.

This is not too bad. It does not disclose a cause of action, because the nature of the transaction, the parties, and the date, are not set out. But there is some general indication of an intention to plead fraud, misrepresentation and the levying of a criminal rate of interest. If properly particularized it might form the basis of an arguable defence or cause of action against the plaintiff.

[6] But unfortunately the counterclaim does not give anything I can recognize as particulars in any of its remaining 96 paragraphs. A selection of other pleadings, chosen not entirely at random, follows:

5. For the SUPREME-COURT of the BRITISH-COLUMBIA, with the possession of this Counter-claim-vessel is, as the holder in the due-course of this Counter-claim-vessel, with the knowledge/claim with this Counter-claim-vessel.

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14. For the establishment of the Truth with the noun-subject-matter-language with this Counter-claim in the now-tense is with the now-tense-seizure/salvage of the fiction-jurisdiction, in the use by the PLAINTIFF and DEFENDANT by the COUNTER-CLAIM, by the [DE]FENDANT.

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17. For the utilization/operation of the fictitious-language/scribble/scribble-procedures of the English-language by the PLAINTIFF and DEFENDANT by the COUNTER-CLAIM is with the creation of the fictitious-language/scribble by the PLAINTIFF and DEFENDANT by the COUNTER-CLAIM.

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21. For the use of the word: OF, in the phrase/claim: STATEMENT OF CLAIM(sic), with the absence of an article in the immediate-next-position, is with the use of the word: OF, as the adverb for the modification of the immediate-next-word: CLAIM, as a verb, by a procedure of the English-language.

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38. For the use of the pre-fix: De, with the word: De-fendant, is with the use of the pre-fix for the negation of the root-word, fendant, by the attachment and modification of the pre-fix of the negation: De, by a procedure of the English-language.

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46. For the use of the word: **Plaintiff**, as a verb in the phrase/claim is with the lack of the certification/authentication of the **subject-matter-noun-Plaintiff** with the CLAIM.

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74. For the lack of the joinder and jurisdiction in the now-tense is with the lack of the now-tense-statement/claim: incorporation, registration, entrance, containment, charge, calculation, expiration, placement, assignment, deliverance, acknowledgment, fault, attempt, retrieval, refusal, suffering, enrichment, entitlement, conversion, estimation and negligence, by the PLAINTIFF and DEFENDANT by the COUNTER-CLAIM, for the now-tense-adjudication of a past-tense-statement/claim by the SUPREME-COURT of the BRITISH-COLUMBIA.

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78. For the ten-dollar-late-fee is within the meaning of an interest-charge, [SECTION: 347(2) OF THE CRIMINAL-CODE OF THE CANADA], and same-fee is with the bringing of the interest-rate, with the existing-rate of the interest [24% per-annum] with the lease, into a criminal-rate of the interest.

As the sample: 1-DAY	= 17,477%
10-DAYS	= 417%
31-DAY	=98.35%

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89. FOR THE **[DE]FENDANT-CLAIMS**, THAT THE LEASE, BY THE PLAINTIFF AND DEFENDANT BY THE **COUNTER-CLAIM**, IS WITH THE LACK OF THE **SUBJECT-MATTER**, FOR THE FOUNDATION OF A CLAIM AGAINST THE **[DE]FENDANT**, AND AS A RESULT, WITH THE VOID.

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94. FOR THE [DE]FENDANT-CLAIMS, THAT THE LEASE IS WITH A PROVISION FOR A CRIMINAL-RATE OF THE INTEREST, [SECTION: 337 OF THE CRIMINAL-CODE OF THE CANADA], AND AS A RESULT, WITH THE REASON FOR THE FORFEITURE OF THE PLAINTIFF'S-DEFENDANT'S BY THE COUNTER-CLAIM-LOCUS-STANDI IN THE SUPREME-COURT OF THE BRITISH COLUMBIA FOR THE SEEKING OF A REMEDY.

95. OR IN THE ALTERNATIVE, FOR THE [DE]FENDANT-CLAIMS, ORDER OF THE COURT FOR AN ACCOUNTING, BY AN INDEPENDENT-ACCOUNTANT, OF THE PLAINTIFF'S-BOOKS FOR A DETERMINATION OF THE AMOUNT-OF-MONEY, WITH THE PLAINTIFF, BY THE WAY OF AN EARNING IN THE FORM-OF-MONEY FROM A CRIMINAL-RATE OF THE INTEREST, FROM ALL LEASE-AGREEMENTS, FOR A CALCULATION OF THE EXEMPLARY-DAMAGES, EQUAL WITH THE AMOUNT-FOUND, FOR THE BENEFIT OF THE [DE]FENDANT.

96. :ANIMUS-MININIS EST ANIMA-SCRIPTI

FOR THE INTENTION OF A PARTY IS WITH THE SOUL OF THE INSTRUMENT. .

97. :RATIO-LEGIS EST ANIMA-LEGIS

FOR THE REASON OF THE LAW IS WITH THE SOUL OF THE LAW.

The document concludes with this stirring declamation:

By the [DE]FENDANT:

In the City of the Vancouver

in the Province/State of the British-Columbia in the

Land of the Canada with the Law of the Flag and with

the right of the contract.

:Date: 2000-Anno-Domini/10/25

In the Good-faith, with the God as the Witness;

:Autograph of the [DE]FENDANT

SEAL

:"Aerock:Shandler: 2000-ANNO-DOMINI/10/25"

:Aerock: Shandler

The signature of Mr. Shandler is sealed with a single fingerprint.

[7] There are a couple of paragraphs where a glimmering of a defence against the plaintiff can be discerned. Paragraphs 78 and 94 raise a question of a criminal rate of interest, but give no particulars amounting to a cause of action. Paragraph 89 is an unparticularized assertion that the lease forming the basis of the plaintiff's claim is void. Paragraph 95 requests an accounting of the amount due under the lease. These allegations, if fleshed out with particulars, might conceivably amount to a defence against the plaintiff's claim. But even with any imaginable particulars, they could not possibly form the basis for a claim against the defendant by way of counterclaim.

[8] In the result, I am satisfied that the counterclaim does disclose no cause of action and must be dismissed, with costs.

[9] If Mr. Shandler genuinely believes he has a defence against the plaintiff's claim, I would respectfully suggest that, without sacrificing his friendship with Mr. Naudi, he might seek advice from someone whose theories of pleadings and grammar are rather more attuned to traditional usage. It is certainly thought-provoking to consider the "de" in "defendant" as a negation of a root word "fendant", and "plaintiff" as a verb. (If the OED is watching, Mr. Naudi said it first, not I.) But the judges and masters of the Supreme Court of British Columbia are required to be somewhat conservative, if not downright pedantic, when it comes to pleadings. Our scribble/scribble-procedures are not inflexible, but they do require that counterclaims disclose a comprehensible, arguable cause of action, and I am afraid that this one does not.

"Master Bolton"