

# COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Dick v. Vancouver City Savings Credit Union*,  
2023 BCCA 435

Date: 20231117  
Docket: CA49457

Between:

**Rodney Daniel Dick**

Appellant  
(Defendant)

And

**Vancouver City Savings Credit Union**

Respondent  
(Respondent)

Before: The Honourable Mr. Justice Voith  
(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated  
October 6, 2023 (*Dick v. Vancouver City Savings Credit Union*,  
Vancouver Dockets H981128 and S045093).

## Oral Reasons for Judgment

No one appearing on behalf of the Appellant

No one appearing on behalf of the  
Respondent

Place and Date of Hearing:

Vancouver, British Columbia  
November 17, 2023

Place and Date of Judgment:

Vancouver, British Columbia  
November 17, 2023

**Summary:**

*The applicant is subject to vexatious litigant orders in both the Supreme Court and Court of Appeal for British Columbia, which require him, and his companies, to apply for leave to commence a proceeding in both courts. The applicant applied to the Supreme Court for leave to make an application to set aside two court orders made approximately 25 years ago and to bring a claim against his then-lawyer. His application was dismissed. The applicant now applies for leave in this Court to appeal that dismissal. Held: Application dismissed. In the context of a leave application brought as a result of a vexatious litigant order, the usual test for leave to appeal applies, but the primary factor is the merit of the appeal. The issues the applicant seeks to raise have been repeatedly determined in earlier proceedings. The appeal has no prospect of success and is entirely without merit.*

**VOITH J.A.:**

**INTRODUCTION**

[1] This is an application by Rodney Daniel Dick, who has been declared a vexatious litigant, for leave to commence an appeal from Justice Sharma’s order, pronounced October 6, 2023. Justice Sharma denied Mr. Dick’s request for leave to make an application to court to set aside orders made by Master Patterson on October 26, 1998 and Master Nitikman on April 23, 1998 and to bring a claim against his lawyer at the time for breach of trust.

**BACKGROUND**

[2] Mr. Dick and his company, R.D. Backhoe Services Inc., are subject to an order of Justice Gray pronounced February 20, 2007, prohibiting them from initiating legal proceedings in the Supreme Court without leave of the court (reasons indexed as *Dick v. Vancouver City Savings Credit Union*, 2007 BCSC 1419).

[3] Justice Brown made a similar order on June 19, 2016 declaring Mr. Dick, R.D. Backhoe Services and his other company, 611481 B.C. Ltd., to be vexatious litigants (reasons indexed as *R.D. Backhoe Services Inc. v. Graham Construction and Engineering Inc.*, 2016 BCSC 1590).

[4] Mr. Dick applied before Justice Sharma for leave to apply under Rule 23-6 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 to set aside an order *nisi*

of foreclosure made by Master Patterson about 25 years ago and an order of Master Nitikman made roughly around the same time, and to bring a claim against his then-lawyer. Rule 23-6(8.1) states that an appeal from an order of a master's decision must be brought by filing a notice of appeal in Form 121 within 14 days after the order is made. According to his materials, these matters arise from a series of foreclosure proceedings that took place approximately 25 years ago resulting in multiple court orders.

[5] In Justice Gray's 2007 reasons, she sets out some of the facts and underlying history of this matter. That history includes the fact that Master Groves dismissed Mr. Dick and his company R.D. Backhoe Services Inc.'s claims against Vancouver City Savings Credit Union and two of its employees, Justin Stubbs and Colin Grant, Citizens Bank of Canada and Westminster Savings Credit Union on the basis that it was plain and obvious that the doctrine of *res judicata* applied to the action, as those claims had been determined in the earlier foreclosure proceedings. Master Groves' decision was upheld on appeal by Justice Crawford in reasons indexed at 2006 BCSC 1346. Justice Gray similarly dismissed the claim brought before her by Mr. Dick because it was based on matters that had been decided and could not be revisited.

[6] Mr. Dick is also subject to an order by Justice Griffin, pronounced June 6, 2023, requiring leave to commence proceedings in this Court. In CA49056, Justice Griffin made an order in chambers dismissing Mr. Dick and his companies', R.D. Backhoe Services Inc. and 611481 B.C. Ltd., application for an extension of time to appeal Justice Crawford's order pronounced on February 21, 2007. On the respondents' application for a vexatious litigant declaration, Justice Griffin ordered that Mr. Dick, his companies and any other company that Mr. Dick controls, were prohibited from bringing or continuing any appeal or application for leave to appeal without leave of the court or a justice. She further ordered that any such application be made in writing and could be determined by a justice without an oral hearing.

[7] Justice Griffin made an identical order that same day in CA49053.

[8] On November 14, 2023, in *611481 BC Ltd. v. Graham Construction and Engineering (1985) Ltd.*, 2023 BCCA 414 (the “481 Reasons”) and in *Dick v. Insurance Corporation of British Columbia*, 2023 BCCA 415, Justice Saunders dismissed two of Mr. Dick’s applications for leave to commence an appeal from the order of Justice Jenkins on August 28, 2017 and the order of Associate Chief Justice Cullen on July 9, 2012, respectively. In both cases, Justice Saunders found that the proposed appeals were wholly without merit and had no chance of success.

**LEGAL FRAMEWORK**

[9] In the 481 Reasons, Justice Saunders set out the legal framework that applies in applications for leave to commence an appeal brought by a vexatious litigant.

[10] To summarize, in the context of a leave application brought as a result of a vexatious litigant order, the usual test for leave to appeal applies: *Goldman, Sachs & Co. v. Sessions*, 2000 BCCA 326 (Chambers) at para. 10. There are four issues:

- 1) whether the point on appeal is of significance to the practice;
- 2) whether the point raised is of significance to the action itself;
- 3) whether the appeal is *prima facie* meritorious, or, on the other hand, whether it is frivolous; and
- 4) whether the appeal will unduly hinder the progress of the action.

[11] However, on a leave application involving a person who is declared a vexatious litigant, the primary factor is the merit of the appeal: *Pearlman v. Critchley*, 2012 BCCA 344, aff’d 2012 BCCA 398, leave to appeal to the SCC ref’d [2012] S.C.C.A. No. 527.

[12] In assessing merit, the applicant must be able to show that the proceeding is “reasonably founded or arguable”: *Keremelevski v. Ukrainian Orthodox Church St. Mary Metropolitan*, 2012 BCCA 237 at para. 13.

**DISPOSITION**

[13] I have reviewed the materials Mr. Dick filed in support of his application. In my view, the appeal has no prospect of success and is entirely without merit. Quite apart from limitation issues, the matters Mr. Dick seeks to raise have been repeatedly determined, over many years, in earlier proceedings. Accordingly, the application is dismissed.

“The Honourable Mr. Justice Voith”