

Court of King's Bench of Alberta

Citation: Canadian Imperial Bank of Commerce v Hayden, 2023 ABKB 384

Date: 20230626
Docket: 2101 08260
Registry: Calgary

Between:

Canadian Imperial Bank of Commerce

Proposed Respondent / Plaintiff

- and -

Ingrid Hayden

Proposed Appellant / Defendant

**Memorandum of Decision
of Associate Chief Justice
K.G. Nielsen**

I. Introduction

[1] Ingrid Hayden (Ms. Hayden) is a person who has engaged in extensive litigation that involves many different opposing parties in the Court of King's Bench of Alberta and the Court of Appeal of Alberta and who has on six occasions sought leave to appeal from the Supreme Court of Canada. All of those Supreme Court of Canada leave to appeal applications were denied; Ms. Hayden in five instances was ordered to pay costs.

[2] On November 17, 2020, Ms. Hayden was made subject to prospective court access gatekeeping in a decision of Neufeld J reported as *Hayden v Hayden*, 2020 ABQB 700, leave to appeal denied 2021 ABCA 202 (*Hayden v Hayden #1*). The effect of *Hayden v Hayden #1* is

that Ms. Hayden must obtain permission - “leave” - prior to initiating litigation in the Court of King’s Bench of Alberta.

[3] Ms. Hayden’s home has recently been the subject of a foreclosure proceeding: *Canadian Imperial Bank of Commerce v Hayden*, Court of King’s Bench of Alberta Action No. 2101 08260 (*Foreclosure Action*). Ms. Hayden has vigorously contested the *Foreclosure Action*, going so far as to attempt to counterclaim against not only the lender, Canadian Imperial Bank of Commerce (CIBC), but also complete non-parties to that litigation, including the Province of Alberta, Administrative Justices of this Court, and a Justice and Case Management Officer of the Court of Appeal of Alberta: *Canadian Imperial Bank of Commerce v Hayden*, 2021 ABQB 647, leave to appeal to SCC refused, 40224 (30 March 2023) (*CIBC v Hayden #1*). To date, this single foreclosure action has led this Court to issue six reported Memoranda of Decision that document attempts to manage Ms. Hayden’s abusive, wasteful, and hopeless litigation.

[4] Ms. Hayden has a record of ignoring the leave to file requirement imposed in *Hayden v Hayden #1: Canadian Imperial Bank of Commerce v Hayden*, 2022 ABQB 593 (*CIBC v Hayden #5*); *Hayden v Hayden*, 2022 ABKB 648 (*Hayden v Hayden #2*). That led Associate Chief Justice Rooke to impose further stringent requirements on Ms. Hayden in *CIBC v Hayden #5* at para 7:

1. Ms. Hayden is prohibited from filing any document with the Alberta Court of (King’s) Bench, except with leave of the Court.
2. If Ms. Hayden seeks leave to file any document with the Alberta Court of (King’s) Bench, Ms. Hayden must submit that document to (the Office of Associate Chief Justice Rooke), along with a supporting affidavit as specified in (*Hayden v Hayden #1*), at para 47(2).
3. Any document or attempted filing that does not meet these criteria will be discarded without any response, except that the Court may impose further penalties, as appropriate.
4. **The Clerk of the Court shall refuse any document, candidate filing, or other item from Ms. Hayden, except if that document, candidate filing, or other item is accompanied by a letter or Order of myself, or my designate, that permits filing.**
5. Ms. Hayden is prohibited from submitting any document to (the Office of Associate Chief Justice Rooke):
 - a) that attempts to initiate a legal process or step in the Alberta Court of (King’s) Bench Docket 2101 08260 foreclosure proceeding, pursuant to paragraph 2 above;
 - b) except where Ms. Hayden provides proof that Ms. Hayden has paid the \$11,000 in *Rule* 10.49(1) penalties previously assessed.

(Emphasis in original.)

Ms. Hayden never paid the \$11,000 penalty pursuant to *Rule* 10.49(1) of the *Alberta Rules of Court*, Alta Reg 124/2010, referenced above in clause 5(b). However, those penalties were paid to the Court during the distribution of funds in the *Foreclosure Action: Affidavit of Receipts and*

Disbursements Accounting for Funds Disbursed, filed March 13, 2023. I conclude on that basis that clause 5 in *CIBC v Hayden #5* at para 7 is no longer in effect.

[5] Associate Chief Justice Rooke retired in December 2022. On May 1, 2023, the Office of Justice Jeffrey received an email from Ms. Hayden that states, in part:

... I am submitting this application and affidavit to ask for permission to file. I am required to ask for permission before I can file any documents. ...

This correspondence was forwarded to me as I am responding to all leave requests from persons subject to court access restrictions, including Ms. Hayden: e.g., *Hayden v Canadian Imperial Bank of Commerce*, 2023 ABKB 100 (*Hayden v CIBC*); *Canadian Imperial Bank of Commerce v Hayden*, 2023 ABKB 152 (*CIBC v Hayden #6*).

[6] Ms. Hayden's email attached an unsworn and undated 220-page Affidavit, that states the Review Officer of the Court of King's Bench of Alberta conducted an assessment of costs in the *Foreclosure Action* on April 20, 2023. The Affidavit states:

I am asking for a review of the Review Officer's decision to award all cost claimed by *Counsel Stuart Weatherhill* ... Stuart has claimed excessive cost, both for himself, the buyer and the Plaintiff, with no supporting documents from the plaintiff or Stuart. *Counsel Stuart Weatherhill* has claimed \$26, 872.02 in cost for steps that he has taken to defend the Plaintiff, for the duration of the lawsuit. ... (sic - emphasis in original.)

[7] What follows is a difficult to summarize series of complaints, for example that include:

- 1) the *Foreclosure Action* was in some manner faulty or void because the Statement of Claim was not accompanied by an affidavit;
- 2) Ms. Hayden was not notified that the Court had appointed a specific real estate agent;
- 3) when Ms. Hayden's former property was listed, the residence was not described accurately;
- 4) signage that a property was for sale was not placed in front of Ms. Hayden's residence;
- 5) "... At no time did the listing Agent leave a card or anything at my door. ...";
- 6) Associate Chief Justice Rooke had improperly penalized Ms. Hayden for her litigation misconduct;
- 7) Ms. Hayden's residence was not continually listed, but why this is problematic is not identified;
- 8) any property management expenses were not legitimate, since Ms. Hayden was at all times occupying the residence;
- 9) the quantum of debt owed by Ms. Hayden as found by this Court was factually wrong;
- 10) the sale price of Ms. Hayden's residence was too low;

- 11) the *Foreclosure Action* was flawed because Ms. Hayden says certain facts were not identified and addressed; and
- 12) **“Also of concern, is that fact that BOTH MORTGAGES AS CONDUCTED BY FNF CANADA. DESPITE THE FACT THAT I LIVE IN CALGARY. THE MORGAGEE IS IN VANCOUVER ...”**
(emphasis in original).

[8] I concluded from these materials that what Ms. Hayden seeks is leave to file an appeal of the April 20, 2023 Assessment Decision of the Review Officer. That is consistent with another document received along with the unsworn undated Affidavit, an unfiled “Notice of Appeal of Review Officer’s Decision” that provides no particulars of the basis of that proposed Appeal.

[9] Subsequently, on May 15, 2023, Ms. Hayden sent my Office an email that stated she had now identified more materials “... that will make a tremendous difference in my appeal ...”. Ms. Hayden also indicated she would provide a transcript of the April 20, 2023 hearing. These materials were received by email on May 28, 2023, along with a letter dated May 15, 2023, that generally restated Ms. Hayden’s claims.

II. Test for Leave to Initiate Litigation

[10] “... [A] person subject to court access control is presumed to engage in illegitimate litigation unless the Court is satisfied otherwise. ...”: *Re Thompson*, 2018 ABQB 87 at para 19, aff’d 2018 ABCA 111, leave to appeal to SCC refused, 38204 (14 February 2019).

[11] Permission to initiate litigation or continue stayed litigation both test the merit of Court activities on the same standard. A person subject to court access restrictions must:

- 1) establish reasonable grounds for the litigation; and
- 2) depose fully and completely as to the facts and circumstances surrounding the proposed claim or proceeding.

(*Re Thompson*, 2018 ABQB 87 at paras 19, 27; *VWW v Wasylyshen*, 2013 ABQB 327 at para 42, aff’d 2014 ABCA 121.)

[12] This threshold, that must be established on a balance of probabilities, is not a high one, and, in many ways, parallels the test for Summary Judgment: *Re Thompson*, 2018 ABQB 87 at paras 19, 26. The person subject to Court access leave restrictions is expected to put his or her “best foot forward” to establish the basis to initiate or continue an Action: *Re Thompson*, 2018 ABQB 87 at paras 26-27.

[13] The documents necessary to seek leave are an affidavit to provide evidence, and, in the case of a new Action, Application, Appeal, or other litigation step, a copy of the proposed initiating filing: *Re Moore*, 2018 ABQB 261; *Latham (Re)*, 2018 ABQB 906.

[14] Leave may be granted in part: *Latham (Re)*, 2018 ABQB 906; *Belway v Lalande-Weber*, 2017 ABCA 108 at para 10, leave to appeal to SCC refused, 37708 (21 December 2017).

[15] Leave submissions to initiate or continue litigation may also be rejected:

- 1) where the materials do not satisfy the criteria set out in the Court Access Restriction Order (*Re Gauthier*, 2018 ABQB 99; *Re Botar*, 2018 ABQB 193; *Thompson v Alberta Labour Relations Board*, 2018 ABQB 220,

leave to appeal to SCC refused, 38267 (31 January 2019); *Re Thompson*, 2018 ABQB 355, leave to appeal to SCC refused, 38266 (31 January 2019); *Association of Professional Engineers and Geoscientists of Alberta v Drover*, 2021 ABQB 511; *Richardson v MacDonald*, 2022 ABQB 274);

- 2) if the submissions exhibit indicia of abusive litigation (*ET v Calgary Catholic School District No 1*, 2017 ABCA 349 at para 12, leave to appeal to SCC refused, 38081 (8 November 2018); *Alberta Treasury Branches v Hok*, 2018 ABQB 316; *Thompson v Alberta Labour Relations Board*, 2018 ABQB 220; *Re Botar*, 2018 ABQB 193; *Trinity Place Foundation of Alberta v Templanza*, 2019 ABQB 45; *Onischuk (Re)*, 2019 ABQB 229; *Fletcher v Davidson & Williams LLP*, 2019 ABQB 396; *Ubah v Canadian Natural Resources Limited*, 2021 ABQB 208; *Knutson (Re)*, 2021 ABQB 367; *McMunn v Hok*, 2021 ABQB 550; *Canadian Imperial Bank of Commerce v Hayden*, 2021 ABQB 985, leave to appeal to SCC refused, 40284 (4 May 2023); *Rana v Rana*, 2022 ABQB 79; *Canadian Imperial Bank of Commerce v Hayden*, 2022 ABQB 97, leave to appeal to SCC refused, 40284 (4 May 2023); *Rana v Rana*, 2022 ABQB 111; *Rana v Rana*, 2022 ABQB 114; *Fiset v Feeney*, 2022 ABQB 211; *Hayden v Alberta Health Services*, 2022 ABQB 335; *Richardson v MacDonald*, 2022 ABQB 274; *Royal Bank of Canada v Anderson*, 2022 ABQB 354; *Canadian Imperial Bank of Commerce v Hayden*, 2022 ABQB 498; *Bissky v MacDonald*, 2022 ABKB 774; *Hayden v CIBC*; *Ubah v Ubah*, 2023 ABKB 111);
- 3) where the abusive litigant refuses to provide the proposed filing (*Re Thompson*, 2018 ABQB 355; *Onischuk (Re)*, 2019 ABQB 229; *Hayden v Alberta Health Services*, 2022 ABQB 335);
- 4) where the abusive litigant provides false information or fails to provide necessary information (*Re Gauthier*, 2018 ABQB 99; *Rana v Rana*, 2022 ABQB 114; *Bissky v MacDonald*, 2022 ABKB 774);
- 5) where the abusive litigant fails to provide materials that are required to evaluate the proposed litigation step, such as a transcript of a proceeding proposed for appeal (*Alberta Treasury Branches v Hok*, 2018 ABQB 316; *Canadian Imperial Bank of Commerce v Hayden*, 2021 ABQB 985, leave to appeal to SCC refused, 40284 (4 May 2023); *Rana v Rana*, 2022 ABQB 111; *Hayden v Alberta Health Services*, 2022 ABQB 335); and
- 6) where the Court has no jurisdiction over the matter (*Hayden v Alberta Health Services*, 2022 ABQB 335; *Ubah v Ubah*, 2023 ABKB 111).

[16] There is no appeal to the Court of Appeal of Alberta of a decision to deny leave to continue litigation: r 14.5(4) of the *Alberta Rules of Court*; A litigant who is denied leave to continue litigation by the Court of King's Bench of Alberta may, however, seek leave from the Supreme Court of Canada.

III. Analysis

[17] Ms. Hayden's leave to appeal request is rejected on multiple independent bases. I note, prior to reviewing the issues with her leave request, that it is up to Ms. Hayden to establish her proposed Appeal has a reasonable basis.

[18] First, the majority of the grounds for appeal identified in Ms. Hayden's Affidavit and other documents have little or nothing to do with assessment of litigation costs by the Review Officer. The Review Officer's function is to examine whether the billed lawyer expenses and disbursements submitted by Counsel for CIBC are appropriate. However, what Ms. Hayden identifies as issues have nothing to do with the Reviewer Officer's function and Court cost awards, for example:

- Ms. Hayden's complaints about penalties imposed by Associate Chief Justice Rooke;
- alleged deficiencies in signage to advertise sale of Ms. Hayden's residence;
- the quantum of the foreclosure sale;
- alleged misdescription of Ms. Hayden's residence; and
- this Court's findings of fact and law on the quantum of debt owed by Ms. Hayden to CIBC.

[19] The only point in which Ms. Hayden appears to raise an issue that does relate to the Bill of Costs is her complaint that all property management expenses were improper, since Ms. Hayden was at all times occupying the residence. However, what is plain from the *Foreclosure Action* litigation record is that Ms. Hayden was and is the antithesis of a cooperative homeowner facing a forced Court-ordered sale. Thus, Ms. Hayden has not established a reasonable basis for her proposed Appeal. That is the first independent basis to reject Ms. Hayden's proposed Appeal.

[20] Second, many of the identified grounds of appeal have already been litigated and re-litigated by Ms. Hayden. That makes this proposed Appeal a collateral attack on prior proceedings. For example, Ms. Hayden's claim that the quantum of debt determined by the Court of King's Bench of Alberta is wrong has been rejected in *Canadian Imperial Bank of Commerce v Hayden*, 2022 ABQB 97, leave to appeal to SCC refused, 40284 (4 May 2023), and *Canadian Imperial Bank of Commerce v Hayden*, 2022 ABQB 498. However, Ms. Hayden continues to make the same allegations. Ms. Hayden's attempts to re-litigate settled issues is a second independent basis on which I conclude Ms. Hayden's proposed Appeal should be rejected.

[21] Third, review of the transcript of the April 20, 2023 hearing before Review Officer Ellery makes very obvious that the Review Officer directly evaluated Ms. Hayden's complaints that she has now repeated in her leave application. The Review Officer carefully explained to Ms. Hayden that her issues were either settled by prior decisions of this Court, or outside the Review Officer's jurisdiction. Despite this Court's repeated instructions and warnings, Ms. Hayden's conduct at the April 20, 2023 was to abusively attempt to re-litigate long settled issues, and unwind the entire foreclosure in her favour. That far exceeded the scope of the Review Officer's hearing, and the Review Officer repeatedly explained that to Ms. Hayden.

[22] What the transcript also discloses is that Counsel for CIBC had discounted the amount billed to Ms. Hayden by around a quarter. The Review Officer characterized this as "... a very

large discount ... that covers anything that you just have complained about, and more.” The Review Officer concluded that much of the expense and complexity in the foreclosure was the direct consequence of Ms. Hayden’s relentless and obstinate re-litigation and refusal to follow instructions. The Review Officer observed in making his Decision that heightened litigation costs were appropriate because: “... [t]here are things that have taken place on this file that I have never seen on any litigation file, let alone a residential foreclosure file ...”, confirmed the bill of costs, and observed that the discount provided was “... probably more than I would have given.”

[23] Ms. Hayden raises no reasonable ground for appeal that relates to the April 20, 2023 hearing. Instead, the transcript of that proceeding confirms Ms. Hayden’s conduct in that hearing was an abuse of the Court and its processes. That is a third separate and independent reason to refuse Ms. Hayden's leave to appeal the Review Officer’s Decision.

[24] The proposed Appeal is an abuse of Court processes, and leave is denied.

IV. Conclusion

[25] Ms. Hayden’s proposed Appeal of the Review Officer’s April 20, 2023 Decision is rejected. I have previously observed that Ms. Hayden is essentially unmanageable, and that this Court lacks effective mechanisms to mitigate the harm and waste Ms. Hayden inflicts with her persistent, repeated, repetitious, and abusive leave requests: *Hayden v CIBC* at paras 27-30; *CIBC v Hayden #6* at paras 19-20. I have recommended Ms. Hayden reconsider her litigation approach and obtain professional legal assistance: *CIBC v Hayden #6* at para 21. This latest leave request demonstrates that suggestion has made no difference at all.

[26] Ms. Hayden shall be served this Memorandum of Decision by email. I direct a copy of this Memorandum of Decision is provided to Counsel for CIBC. As previously indicated, if Ms. Hayden disagrees with the outcome of her leave to Appeal Application, she should seek leave from the Supreme Court of Canada.

Dated at the City of Edmonton, Alberta this 26th day of June, 2023.

K.G. Nielsen
A.C.J.C.K.B.A.

Appearances by Written Submissions:

Ingrid Hayden
Self-Represented Litigant

S. J. Weatherill
Counsel for Canadian Imperial Bank of Commerce – no appearance