COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Lam v. Lifemark Health Corp.,* 2024 BCCA 229

Date: 20240521
Docket: CA49466

Between:

Leung Wai Lam

Appellant
(Plaintiff)

And

Lifemark Health Corp. aka Lifemark Health Management Inc. aka Lifemark Health Inc., Ken Henderson, Vanja Mudrinic, Lori Nishi, Anne Marsden, John Joffe, Andrew Huber, Lorna MacDougall, Tim Hunt, Tracy Krahn, Jenny Leard, Canadian Back Institute Operating Limited Partnership aka CBI Health, Ognjen Dukic, Yvonne Lynch, Physiomoves Physiotherapy Clinic, Tiphanie Ge, Susan MacLennan, Tai McLavy, M. Dunn, Prab Dhaliwal, Geoff Gordon, Workers' Compensation Board of B.C., Workers' Compensation Appeal Tribunal and Ellen Riley

Respondents
(Defendants)

Before: The Honourable Mr. Justice Willcock
The Honourable Mr. Justice Abrioux
The Honourable Madam Justice DeWitt-Van Oosten

On an application to vary: Orders of the Court of Appeal for British Columbia, dated January 30 and March 18, 2024 (*Lam v. Lifemark Health Corp.*, Vancouver Docket CA49466).

Oral Reasons for Judgment

The Appellant, appearing in person:	L.W. Lam
Counsel for the Respondents, John Joffe and M. Dunn:	A. Taggar
Counsel for the Respondents, Canadian Back Institute Operating Limited Partnership aka CBI Health and Physiomoves Physiotherapy Clinic:	D.J. Reid

Counsel for the Respondent, Tiphanie Ge:	M. Bellomo
Place and Date of Hearing:	Vancouver, British Columbia May 21, 2024
Place and Date of Judgment:	Vancouver, British Columbia May 21, 2024

Summary:

These are applications to vary or cancel two orders made by justices of this Court in chambers. Pursuant to the orders under review, the appellant is required to post security for the costs of the underlying appeal of certain respondents. Held: Applications dismissed. In addressing the applications for security for costs on their merits, neither justice erred in principle or in law. Nor did either justice misconceive the relevant facts. Further, in the circumstances, there is no basis to set aside the first of the challenged orders on the ground that it was made in the absence of the appellant.

[1] **WILLCOCK J.A.**: Leung Wai Lam, the appellant in the underlying appeal, applies pursuant to s. 29(1) of the *Court of Appeal Act*, S.B.C. 2021, c. 6, to vary or cancel two orders made by justices in chambers:

a) An order made by Justice Hunter on January 30, 2024, ordering him to pay $5,000 into court as security for costs of the appeal of the respondents Dr. Joffe and Dr. Dunn and staying the appeal as against them pending that payment (the Hunter Order); and

b) An order made by Justice Griffin on March 18, 2024, ordering him to pay $4,000 into court as security for costs of the appeal of the respondents Canadian Back Institute Operating Limited Partnership aka CBI Health (CBI) and Physiomoves Physiotherapy Clinic (Physiomoves) and staying the appeal as against them pending that payment (the Griffin Order).

[2] The appeal is from the October 13, 2023, judgment of Justice Milman dismissing the appellant's civil claim, for reasons indexed at 2023 BCSC 1782. The civil claim was for damages against those who assessed Mr. Lam's *Workers Compensation Act*, R.S.B.C. 2019, c. 1, claim and provided treatment to him (or failed to provide treatment to him) in relation to a workplace injury sustained in 2012.

[3] The action was commenced by a notice of civil claim filed on August 30, 2022, and amended thereafter.

[4] In seeking the dismissal of the civil claim, the defendants to the action raised what Milman J. described as “overlapping statutory bars”:

a) Section 332 of the *Workers Compensation Act*, which bars actions against employees of the Board in respect of any act, omission or decision which was (or was believed to be) within the jurisdiction of the Board.

b) Section 56 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45, which provides that no legal proceeding for damages may be commenced or maintained against a decision maker or tribunal because of anything done or omitted in the intended performance of any duty or power under an enactment.

c) Section 127 of the *Workers Compensation Act*, which provides that the compensation provisions are in place of any right of action founded on a breach of duty of care against any other employer or worker, and has been held to include physicians providing treatment under the statutory scheme to a worker for injuries sustained in a workplace accident.

d) The limitation standing as a bar to judicial review of decisions of the Workers’ Compensation Board, its Review Division and the Workers’ Compensation Appeal Tribunal under the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241.

e) The *Limitation Act*, S.B.C. 2012, c. 13, or its predecessor.

[5] Justice Milman held as follows:

> [45] I agree with the applicant defendants that it is plain and obvious that the claim is bound to fail and should be struck in its entirety, owing primarily to the numerous overlapping statutory bars canvassed above, which, I accept, operate to preclude an action such as this from being advanced against most if not all of the defendants.
>
> [46] To the extent those statutory bars do not cover all of the claims advanced against all of the defendants, I would also strike the [Amended Notice of Civil Claim] under Rule 9-5(1)(b) as bound to fail on the basis that any aspect of the claim that might not be barred by statute rests entirely on

> speculation and assumption, with virtually no material facts pleaded, let alone attested with evidence to support it.

[6] Justice Milman, in the passage I have cited, refers to numerous overlapping statutory bars. He placed no specific emphasis upon s. 127 of the *Workers Compensation Act* (to which I have referred). The respondents concede that that section has no application in the circumstances of this appeal.

[7] A notice of appeal from the judgment of Milman J. was filed on November 10, 2023.

[8] Drs. Joffe and Dunn filed an application for security for costs on January 12, and set the application for hearing on January 30, after consultation with the appellant. The appellant wrote to counsel for the applicants seeking security shortly before the hearing, asking for an adjournment. That request was refused by counsel; the hearing proceeded in the absence of Mr. Lam. Justice Hunter was made aware of the adjournment request but did not see a basis for adjourning the hearing on the material that was before him.

[9] The limited record did not identify any potential ground for appeal. Justice Hunter concluded the appeal was without merit. Following *Chung v. Shin*, 2017 BCCA 355, which stands for the proposition that impecuniosity of the appellant does not preclude the making of an order for security for costs where an appeal is without merit, he made the order sought despite the fact there was some evidence the appellant was unfit for any gainful employment.

[10] The application of the respondents CBI and Physiomoves came on for hearing on March 18. The appellant, Mr. Lam, appeared on that date and opposed the application.

[11] Justice Griffin found there was some merit in certain arguments made by Mr. Lam but concluded as follows:

> [24] After reading Mr. Lam's [Amended Notice of Civil Claim], and hearing his submissions, I agree that it appears plain and obvious that he advances

> many of the same arguments he made before WCAT, and lost. I refer by way of example to paras. 37, 38, 71–73 and 77–79 of the WCAT Decision.
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> [25] Mr. Lam's [Amended Notice of Civil Claim] is convoluted, but certainly the aspects he focused on in argument before me seem to have no merit because they have already been determined by the WCAT Decision. It is clear to me that Mr. Lam takes issue with the findings and conclusions in the WCAT Decision, and seeks to relitigate them in his [Amended Notice of Civil Claim], including by advancing a claim against the WCAT tribunal member who authored the WCAT Decision. I am of the view that given the apparent lack of merit to these claims, it is appropriate to award the applicants security for costs.

[12] The appellant seeks to set aside the Hunter Order on the following grounds:

> 5. The order for security for costs was granted while the Plaintiff was in the hospital with severe spine pain and was not able to attend to the Court to oppose the application … and to respond to the misapprehension of the fact arising from the fabricated treatment reports and falsified injury status records and the deceptive and untruthful narration of Ms. [Goosen] [counsel for the Workers' Compensation Board of B.C.] on behalf of all applicants/Defendants to procure judgment to strike the Amended Notice of Civil Claim by describing the above false and fabricated documents created by the Defendants to achieve their common goal to injury the Plaintiff for gain.

[13] He seeks to set aside the Griffin Order on the following grounds:

> 29. The Oct 13, 2023 Judgment was procured by … deceit/deceiving submission of Ms. Goosen in conspiracy with all lawyers named on the Judgment.
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> 30. The order for security for costs pronounced on March 18, 2024 was granted by Madam Justice Griffin on the only basis as alleged by the lawyers of CBI, Physiomoves, and Ge that the Amended Notice of [Civil] Claim is a collateral attack to the WCAT Decision … with fabricated fact, which the lawyers of CBI and Physiomoves had not been able to provide any evidence to substantiate the alleged facts as quoted on the WCAT Decision…

[14] A division of this Court will not interfere with the decision of a single justice in chambers unless the Court is satisfied the chambers judge was wrong in law, or in principle, or misconceived the facts: see *Haldorson v. Coquitlam (City)*, 2000 BCCA 672 at para. 7.

[15] In addressing the application for security for costs, both Justices Hunter and Griffin referred to and were guided by the authoritative description of the test to be applied on such an application: *Arbutus Bay Estates Ltd. v. Canada (Attorney*

General), 2017 BCCA 133. Justice Hunter referred, in addition, to the helpful discussion of principles *in Lu v. Mao*, 2006 BCCA 560, and *England Securities Ltd. v. Ulmer*, 2023 BCCA 11. In my view, neither justice erred in principle or in law in addressing the applications on their merits.

[16] I can see no basis to find that either justice misconceived the facts relevant to the security for costs applications.

[17] I would not accede to the application to set aside the Hunter Order on the basis that it was made in the absence of the appellant. There was no formal application for an adjournment before Hunter J.A., such material as there was before him to consider did not make out a case for an adjournment and, finally—and most significantly in my view—neither before Griffin J.A. nor before us has the appellant answered the respondents' assertion that his appeal is without merit in the face of the statutory obstacles which I have described. The decision not to adjourn the January 30, 2024, hearing did not preclude the appellant from advancing a meritorious argument.

[18] I should add that today Mr. Lam produced and sought to rely upon an unfiled book of documents and written argument. As I advised Mr. Lam, in the course of the hearing, we have reviewed the material and written argument filed in accordance with the rules of court. In my view, it is not appropriate for us to consider supplemental material at this point and I will not refer to, or rely upon, the new material produced by Mr. Lam today.

[19] For those reasons, I would dismiss the applications.

[20] **ABRIOUX J.A.**: I agree.

[21] **DEWITT-VAN OOSTEN J.A.**: I agree.

[22] **WILLCOCK J.A.**: The applications are dismissed.

[Discussion with parties re: dispensing with signature]

[23] **WILLCOCK J.A.**: The requirement that Mr. Lam approve the form of order is dispensed with.

[Discussion with parties re: setting further applications]

"The Honourable Mr. Justice Willcock"