

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Dempsey v. Pagefreezer Software Inc.*,
2023 BCCA 212

Date: 20230516
Docket: CA48965

Between:

Nathan K. Dempsey

Appellant
(Plaintiff)

And

**Pagefreezer Software Inc., Michael Riedijk, and
The Attorney General of Canada**

Respondents
(Defendants)

FILE SEALED IN PART

Before: The Honourable Madam Justice Stromberg-Stein
(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated
February 23, 2023 (*Dempsey v. Pagefreezer Software Inc.*,
Vancouver Docket S229680).

Oral Reasons for Judgment

The Appellant, appearing in person
(via videoconference):

N.K. Dempsey

Counsel for the Respondents, Pagefreezer
Software Inc. and Michael Riedijk:

C.W. Garton
M. Shergill, Articled Student

Counsel for the Respondent, Attorney
General of Canada:

L. Chun

Place and Date of Hearing:

Vancouver, British Columbia
May 16, 2023

Place and Date of Judgment:

Vancouver, British Columbia
May 16, 2023

Summary:

Application for extension of time to appeal dismissed as Mr. Dempsey fails to meet the relevant legal test for an extension of time to appeal and, as well, based on his failure to comply with the contempt orders of justices of this Court. Sealing and protection orders made.

STROMBERG-STEIN J.A.:

Nature of the Application

[1] Mr. Dempsey seeks an “extension that the timetable process in his appeal (CA48965) be frozen” until his matter before the B.C. Human Rights Tribunal is adjudicated. In effect, Mr. Dempsey applies for an extension of time to appeal. There is also a request for a sealing order and a protection order.

Background

[2] The respondents are Pagefreezer Software Inc. (“Pagefreezer”), Michael Riedijk (“Mr. Riedijk”), (collectively the “Pagefreezer Respondents”) and the Attorney General of Canada (“Canada”).

[3] Pagefreezer is a company that provides monitoring and archiving of online content. Mr. Riedijk is Pagefreezer’s founder and CEO. Mr. Dempsey was a former employee and shareholder of Pagefreezer.

[4] The procedural history of this matter is somewhat complex. The genesis of this matter is a settlement agreement entered into by Mr. Dempsey, Pagefreezer, and Mr. Riedijk in September 2021, to resolve an oppression dispute between them. In February 2022, Mr. Dempsey filed a petition to set the settlement agreement aside (I will refer to this as the “Petition to Rescind”). This was followed by multiple proceedings in the Supreme Court and appeals in this Court.

[5] The applications before me arise from an order made by Justice Majawa on February 23, 2023. Mr. Dempsey applies for an extension of time to appeal. The proposed appeal would be the fourth appeal filed by Mr. Dempsey essentially arising from the same subject matter (the proposed “Fourth Appeal”).

[6] The proceedings in relation to the First Appeal, Second Appeal and Third Appeal have some relevance to the disposition of this application, so I will discuss these briefly.

The First Appeal: Justice Tucker Interim Sealing Order and Justice Marchand Contempt Finding

[7] In June 2022, Justice Tucker placed an interim sealing order over the entire file concerning the Petition to Rescind, and granted a protection order prohibiting Mr. Dempsey from disclosing any part of the sealed file to non-parties to the action, including a number of third parties Mr. Dempsey wished to involve in the proceeding: 2022 BCSC 1246. The file contained confidential and commercially sensitive materials.

[8] Mr. Dempsey filed an application for leave to appeal (CA48392) Justice Tucker's order on July 6, 2022 (the "First Appeal"). In reasons issued August 22, 2022, Justice Willcock ordered: (1) a permanent sealing order over portions of the appeal record; (2) a 90-day interim sealing order over the remainder of the appeal record; and (3) a protective order prohibiting Mr. Dempsey from disclosing the items under seal to any non-parties without leave of the Court. He also ordered Mr. Dempsey to post security for costs.

[9] Mr. Dempsey failed to comply with Justice Willcock's order to post security for costs.

[10] On October 27, 2022, the respondents applied to dismiss the First Appeal and permanently seal the record.

[11] On November 3, 2022, Justice Marchand: (1) dismissed Mr. Dempsey's appeal as abandoned for failure to post security for costs; (2) permanently sealed portions of the First Appeal record, including all materials filed on or after August 22, 2022, as well as the second Affidavit of Mr. Dempsey made on August 15, 2022, and all response materials to that affidavit; and (3) ordered Mr. Dempsey to post security

for costs for another appeal Mr. Dempsey was planning to file—the Second Appeal—which I will describe.

[12] Importantly, Justice Marchand found Mr. Dempsey in contempt of court for intentionally breaching Justice Willcock’s order by emailing sealed materials from the First Appeal to numerous third parties, including news outlets, the respondent Pagefreezer’s corporate competitors, and government agencies.

[13] Justice Marchand ordered Mr. Dempsey to pay a fine of \$5,000, and awarded special costs to the respondents to be assessed by the Registrar.

[14] Mr. Dempsey refused to sign the orders of Justice Marchand, and has not purged his contempt by paying the fine.

Second and Third Appeal: Abandonment after Failure to Post Security

[15] On August 12, 2022, Justice McNaughton made orders: (1) dismissing Mr. Dempsey’s application to add the Canada Revenue Agency (“CRA”) as a party; and (2) dismissing Mr. Dempsey’s application for an adjournment of his request to add the CRA as a party.

[16] On August 29, 2022, Mr. Dempsey filed a notice of appeal (CA48500) of Justice McNaughton’s orders (the “Second Appeal”).

[17] On September 13, 2022, Justice DeWitt-Van Oosten ordered Mr. Dempsey to post \$8,500 security for costs of the Second Appeal within 30 days.

[18] Mr. Dempsey failed to do so. The Second Appeal was abandoned.

[19] A third appeal of an October 13, 2022 order of Justice Majawa (CA48624), was also abandoned when Mr. Dempsey again failed to post security for costs ordered by Justice DeWitt-Van Oosten.

Present Application to Extend Time to Appeal: Justice Majawa Strikes Out Mr. Dempsey’s Claim, Declares Mr. Dempsey a Vexatious Litigant in the Supreme Court, and Orders a Permanent Sealing Order

[20] Mr. Dempsey’s proposed appeal arises from the fourth claim he has filed against the Pagefreezer Respondents since August 2021, in connection with the settlement agreement he signed with Pagefreezer. To summarize the history leading up to this application, the first proceeding was settled pursuant to a settlement agreement, the second proceeding was dismissed in its entirety, and the third proceeding was discontinued by Mr. Dempsey. The second proceeding led to three appeals brought by Mr. Dempsey. All three appeals were dismissed as abandoned.

[21] In relation to the applications before me (CA48965): on November 30, 2022, Mr. Dempsey brought the underlying action (S229680). He couched it under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50, and sought various forms of relief, including: (1) an order that the CRA provide testimony and cooperate in an investigation against Pagefreezer and Mr. Riedijk; (2) a “Norwich” order certifying various YouTube personalities as a class in light of their alleged conspiracy with Pagefreezer; (3) damages against Pagefreezer and Mr. Riedijk for alleged breaches of Mr. Dempsey’s *Charter* rights; and (4) an order that Mr. Dempsey is indemnified by Canada, Pagefreezer, and Mr. Riedijk for legal costs awarded against Mr. Dempsey in earlier proceedings. Mr. Dempsey alleged that Pagefreezer, Mr. Riedijk, Canada, several YouTube influencers, and others collaborated to harass, stalk, and defraud him; and alleged violations of the *Criminal Code*, the *Canadian Bill of Rights*, the *Privacy Act*, and the *Canadian Charter of Rights and Freedoms*.

[22] On February 1, 2023, Pagefreezer and Mr. Riedijk, joined by Canada, filed an application to strike Mr. Dempsey’s claims pursuant to R. 9-5 of the *Supreme Court Civil Rules*.

[23] The application was heard on February 14, 2023, by Justice Majawa in chambers. Mr. Dempsey chose not to attend. The respondents applied to strike Mr. Dempsey’s claim pursuant to R. 9-5 of the *Supreme Court Civil Rules*.

Pagefreezer and Mr. Riedijk also sought an order declaring Mr. Dempsey to be a vexatious litigant pursuant to s. 18 of the *Supreme Court Act*, on the basis that the claims were duplicative of three prior actions (which had either been settled, dismissed, or discontinued); and for permanent sealing orders over the contents of the court file.

[24] On February 23, 2023, Justice Majawa, in oral reasons for judgment, made the following orders:

- a) The notice of civil claim filed in action no. S229680 was struck out in its entirety without leave to amend, and the action was dismissed in its entirety as against Pagefreezer, Mr. Riedijk and the Attorney General of Canada;
- b) A permanent sealing order was issued over the entirety of the contents of the court file nos. S229680 and S228567;
- c) Mr. Dempsey was declared a vexatious litigant and cannot, except with leave of the court, initiate any proceedings in any registry of the Supreme Court or Provincial Court against Pagefreezer, Mr. Riedijk, or any related entity nor can Mr. Dempsey, except with leave of the court, initiate a proceeding or file any applications in any registry of the Supreme Court or Provincial Court pertaining to or in any way connected with the subject matter of the proceedings in the Supreme Court of British Columbia action nos. S229680, S228567, S220956 or S217072; and
- d) Canada was awarded costs of its application at Tariff B. Pagefreezer and Mr. Riedijk were awarded special costs throughout the course of file no. S2296806.

[25] Justice Majawa held that Mr. Dempsey's action disclosed no reasonable claim, was unnecessary, scandalous, frivolous and vexatious, and was an abuse of the court's process. Justice Majawa added that Mr. Dempsey's claim was an attempt to relitigate the same issues that were finally decided in previous proceedings.

[26] On February 24, 2023, counsel for Pagefreezer and Mr. Riedijk advised Mr. Dempsey of Justice Majawa's decision.

[27] On February 27, 2023, Mr. Dempsey sent a letter to the Supreme Court Registry requesting the court refuse entry of Justice Majawa's order.

[28] On March 21, 2023, Mr. Dempsey was provided with filed copies of Justice Majawa's order, which he refused to accept.

[29] On March 28, 2023, Mr. Dempsey wrote a letter to the Supreme Court Registry attaching a copy of a complaint to the B.C. Human Rights Tribunal, alleging that he was denied a fair trial.

[30] On March 31, 2023, Mr. Dempsey filed a notice of appeal of Justice Majawa's order. The notice of appeal erroneously indicated the orders of Justice Majawa were pronounced March 2, 2023.

[31] On April 14, 2023, Mr. Dempsey served a copy of the notice of appeal on the respondents.

[32] Counsel for Pagefreezer and Mr. Riedijk filed a letter with this Court requesting that the notice of appeal filed by Mr. Dempsey be rejected as it was not filed and served within 30 days pursuant to R. 6(2)(a) of the *Court of Appeal Rules*.

[33] Mr. Dempsey requested that the Registry accept his notice of appeal and stay the appeal until his complaint with the B.C. Human Rights Tribunal is addressed.

[34] On April 14, 2023, the Registrar of this Court issued a letter indicating the appeal was filed out of time, and Mr. Dempsey should bring an application to extend the time to appeal.

[35] On April 19, 2023, Mr. Dempsey filed the application that is before me, seeking an extension of time to appeal Justice Majawa's order. On April 20, 2023, he served his extension application and a sealing order application on the respondents.

Additional Contempt Proceedings

[36] Justice Marchand’s contempt finding is not the sole occasion that Mr. Dempsey has been found in contempt of this Court.

[37] In January and February 2023, Mr. Dempsey, without leave of the Court, emailed a copy of the sealed costs submissions to various politicians and regulatory non-parties.

[38] Following this, in April 2023, the respondents applied for an order finding Mr. Dempsey again in civil contempt and for special costs of the application. In reasons released on May 15, 2023, indexed as 2023 BCCA 202, Justice Voith: (1) found Mr. Dempsey in contempt of court for breaching the Willcock Protective orders, for breaching the Marchand Sealing Order, and for failing to pay the \$5,000 fine ordered by Justice Marchand; (2) ordered Mr. Dempsey to pay a fine of \$10,000; and (3) ordered Mr. Dempsey to pay special costs of \$15,570 to the respondents in relation to the contempt application.

[39] In March 2023, the respondents applied for a permanent sealing order in relation to CA48624 and CA48500. In a statement released on April 27, 2023, with the full judgment released for publication on May 15, 2023, Justice Horsman permanently sealed portions of the record on both appeals. Justice Horsman also issued a permanent sealing ban over any future filings in either of the appeals.

Issues

[40] Should Mr. Dempsey be granted an extension of time to appeal?

[41] Should Mr. Dempsey be barred from bringing an appeal in this Court on account of being held in contempt of orders of this Court and his failure to purge that contempt?

Analysis

Application for Extension of Time to Appeal

[42] I have found the written submissions of counsel for the respondents, particularly Canada, to be helpful, and will closely follow them in considering whether Mr. Dempsey should be granted an extension of time to appeal.

[43] In accordance with R. 6(2) of the *Court of Appeal Rules*, B.C. Reg. 120/2022, Mr. Dempsey was required to file and serve a notice of appeal not more than 30 days after Justice Majawa’s order was pronounced on February 23, 2023. Mr. Dempsey failed to meet the March 27, 2023 deadline. Instead, he filed his notice of appeal on March 31, 2023, and served it on April 14, 2023.

[44] Section 32 of the *Court of Appeal Act*, S.B.C., 2021, c. 6, provides that a justice may extend a time limit in the *Act* or *Rules*, including for filing and serving a notice of appeal. The burden is on the applicant to establish that the criteria for granting such an extension are met: *Rapton v. British Columbia (Motor Vehicles)*, 2011 BCCA 71 at para. 19.

[45] In considering an application to extend time to file and serve an appeal, certain factors are described in *Davies v. C.I.B.C.* (1987), 15 B.C.L.R. (2d) 256 at 259–260 (C.A.):

- a. Was there a *bona fide* intention to appeal?
- b. When were the respondents informed of the intention?
- c. Would the respondents be unduly prejudiced by an extension of time?
- d. Is there merit in the appeal?
- e. Is it in the interest of justice that an extension be granted?

[46] The interests of justice is “an overriding question and embraces the first four questions”: *Davies* at 260–261. But it is “not all that comprises the fifth factor.” The

interests of justice include a myriad of factors, such as the interests of the parties and compliance with the Rules of Court: *Clock Holdings Ltd. v. Braich*, 2009 BCCA 437 at paras. 23–24.

[47] Mr. Dempsey’s application for an extension of time to appeal is opposed by the respondents, primarily on the basis it is not in the interests of justice to allow a late appeal.

Was there a Bona Fide Intention to Appeal?

[48] Mr. Dempsey refused to participate in the Supreme Court process, telling the respondents it was “immaterial”. He told the respondents he was only filing this appeal “out of an abundance of caution”. Mr. Dempsey indicated he “filed a Notice of Appeal concerning S-229680 as a placeholder on March 31, 2023,” four days after the deadline. Mr. Dempsey offers no reasonable explanation or justification for why he did not file his appeal within the deadline.

[49] The respondents provided notice to Mr. Dempsey of Justice Majawa’s order the day the order was made. Mr. Dempsey refused to accept service of Justice Majawa’s order, and failed to attend the hearing that produced that order. Mr. Dempsey now asks for an indulgence of this Court, having previously had little regard to the procedures in the court below.

[50] There is nothing to indicate that Mr. Dempsey had a *bona fide* intention to appeal before the deadline. Mr. Dempsey expressed no intention to appeal Justice Majawa’s order within the statutory time frame. At best, Mr. Dempsey’s communications indicated a refusal to accept the order, as indicated by his request that the order not be entered. As such, this weighs against granting Mr. Dempsey an extension.

Were the Respondents Informed of the Intention?

[51] The respondents were not informed of Mr. Dempsey’s intention to appeal Justice Majawa’s order until Mr. Dempsey belatedly served his notice of appeal on April 12, 2023, well after the deadline. This weighs against granting an extension.

Would the Respondents be Unduly Prejudiced by an Extension of Time?

[52] While Canada suggests it would not be prejudiced by an extension of time to appeal, Pagefreezer and Mr. Riedjik submit they would be prejudiced by an extension because they have undertaken steps in other proceedings, unaware that Mr. Dempsey might still appeal and in light of the fact that the deadline to appeal had elapsed. This Court has held that a respondent is prejudiced by an extension application where the respondent has undertaken other actions to litigate the dispute since the expiry of the appeal deadline: *Li v. Chao Yin Canada Group Inc.*, 2023 BCCA 39 at para. 31.

[53] This consideration weighs against granting an extension.

Is there merit to the proposed appeal?

[54] The assessment of merit of the proposed appeal is the key factor that weighs heavily against granting an extension of time to appeal. I draw on counsels' written submissions to explain why.

[55] Majawa J.'s decision to strike the claim under R. 9-5(1)(a) is a question of law that is reviewed on a correctness standard. Applications brought under R. 9-5(1)(b) or (d) are discretionary and accorded deference on appeal: *M.K. v. British Columbia (Attorney General)*, 2020 BCCA 261 at para. 27. The claim was struck because it did not support a reasonable cause of action against the respondents, and repeated allegations that had been dismissed in earlier proceedings. In such a case, the appellant would have to demonstrate that the judge erred in principle, ignored or misapplied a relevant factor, or made a decision so clearly wrong that it amounted to an injustice: *Greengen Holdings Ltd. v. British Columbia (Ministry of Forests, Lands and Natural Resource Operations)*, 2018 BCCA 214 at para. 24.

[56] Furthermore, there is no basis to interfere with Justice Majawa's vexatious litigant order under s. 18 of the *Supreme Court Act*, nor his award of special costs to Pagefreezer and Mr. Riedjik. The standard of review for a vexatious litigant order is

deferential. The standard of review of special costs is highly deferential: *Singh v. Singh*, 2020 BCCA 21 at para. 153. This Court would unlikely interfere on appeal.

[57] Mr. Dempsey’s proposed appeal fails to meet even the relatively low merits standard, as it is bound to fail. On this basis I would deny his application for an extension: *Anvik v. Mason*, 2022 BCCA 114 at para. 7.

Is it in the Interests of Justice to Grant an Extension?

[58] Mr. Dempsey’s consistent, contemptuous disregard of this Court’s orders weighs heavily against granting his application to extend time to file his appeal.

[59] As of the date of this hearing, Mr. Dempsey has been found in contempt of orders of *this Court* on two separate occasions—contempt which he has not purged. Allowing a litigant in open contempt of this Court to file a late appeal is not in the interests of justice.

[60] Allowing him to file yet another appeal that is doomed to fail would not be in the interests of justice. He has filed three other appeals related to the same subject matter, all of which he abandoned when ordered to post security for costs.

[61] Mr. Dempsey fails to meet the test for an extension of time to file his notice of appeal.

Mr. Dempsey’s Outstanding Contempt

[62] As I have noted, Mr. Dempsey has been found in contempt of orders of this Court on two separate occasions concerning the same matter: November 3, 2022 (Justice Marchand), and May 15, 2023 (Justice Voith). He has not purged his contempt, and continues to be in open defiance of this Court’s orders.

[63] This fact alone is decisive in disposing of Mr. Dempsey’s application for an extension of time for leave to appeal. This Court has a well-established power to refuse to hear or to dismiss an appeal in order to “protect the administration of justice by avoiding circumstances where the Court could be held in disrepute by

assisting a party who has exhibited disdain for the judicial process.”: *Larkin v. Glase*, 2009 BCCA 321 at para. 31

[64] Mr. Dempsey has a demonstrated tendency to disregard this Court’s and the Supreme Court’s orders where they are unfavourable to his position, all while continuing to exploit any available process or procedure to press his claims. As this Court explained in *Larkin*:

[7] A court order must be obeyed until and unless it is reversed. Refusal to obey court orders strikes at the heart of the rule of law, at the core of the organization of our society. If court orders can be disregarded with impunity, no one will be safe. Our free society cannot be sustained if citizens can decide individually what laws to obey and what laws to disregard. ...

[65] I also adopt the quote at para. 44 of Justice Voith’s reasons, from *United Nurses of Alberta v. Alberta (Attorney General)*, [1992] 1 S.C.R. 901 at 931–932, which reads, in part: “The rule of law is directly dependent on the ability of the courts to enforce their process and maintain their dignity and respect.” And “The gravamen of the offence [contempt of court] is rather the open, continuous and flagrant violation of a court order without regard for the effect that it may have on the respect accorded to the edicts of the court”.

[66] I would note, as well, that where a party fails to comply with an order of a justice of this court, s. 36 of the *Court of Appeal Act* provides that this Court may do one or more of the following:

- (a) refuse to hear the party;
- (b) impose terms and conditions, including the payment or disallowance of costs;
- (c) if the party is an appellant, dismiss the appeal as abandoned.

[67] In the circumstances, on this basis alone, I would exercise this Court’s discretion to refuse Mr. Dempsey’s application for an extension of time to file an appeal.

[68] In fact, it is my view that this Court should decline to hear Mr. Dempsey unless and until he purges his contempt.

Disposition

[69] I would dismiss Mr. Dempsey’s application for an extension of time to file an appeal of Justice Majawa’s order. Mr. Dempsey fails to meet the relevant legal test for an extension of time to appeal. As well, I would exercise this Court’s discretion to refuse Mr. Dempsey’s application for an extension of time to appeal based on his failure to comply with the contempt orders of justices of this Court.

[70] Adopting the reasoning of other judges of this Court who have considered sealing orders in prior Dempsey proceedings, a sealing order and protective order is necessary given that confidential information suffuses the material before this Court, and Mr. Dempsey has repeatedly sought to divulge such confidential information to third parties. Both this Court and the Supreme Court have previously issued multiple sealing orders and protective orders over this information. There will be a permanent sealing order over the following documents filed on the applications before me: pp. 11, 29, 41, 92–96, and 172–174 of the Dempsey Affidavit #1 [p. 95 is narrative]; Exhibit A of the Riedijk Affidavit #1; the following parts of Exhibit A of Khanh Gonzalez Affidavit #1: pp. 42–45, 50, 53, 55, 58, 68–70, 75, 79, 86; in the book of authorities arising from the reasons from Majawa J. and Marchand J.A.: pp. 295–297, 302, 306, 313, 327. In addition, there is a protective order barring Mr. Dempsey from disclosing any information under seal in this Court to any person, other than the parties named in the style of proceeding and any counsel he may retain, without prior leave of this Court.

[71] Mr. Dempsey’s signature on the form of the order is dispensed with in light of his history of failing to cooperate in such matters.

[72] The respondents are awarded costs.

“The Honourable Madam Justice Stromberg-Stein”