COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Grace Mtn. Land Company, Ltd. v. 1055249 B.C. Ltd.,* 2024 BCCA 280

Date: 20240725
Docket: CA49958

Between:

Grace Mtn. Land Company, Ltd.,
Herkenn Singh Kenny Braich also known as Kenny Braich,
and 0776423 B.C. Ltd.

Appellants
(Respondents)

And

1055249 B.C. Ltd.

Respondent
(Petitioner)

Before: The Honourable Madam Justice Saunders
(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated May 22, 2024 (*1055249 BC Ltd. v. Grace Mtn. Land Company, Ltd.*, 2024 BCSC 880, Vancouver Docket H190209).

Counsel for the Appellant:	I.G. Nathanson, K.C. C. Chen
Counsel for the Respondent:	M.C. Sennott (via videoconference July 19, 2024) L. Morris
Place and Date of Hearing:	Vancouver, British Columbia July 16 and 18, 2024
Place and Date of Judgment with Written Reasons to Follow:	Vancouver, British Columbia July 19, 2024
Place and Date of Written Reasons:	Vancouver, British Columbia July 25, 2024

Summary:

The appellant applies for leave to appeal an order made by an associate judge in foreclosure proceedings. The application engaged the jurisdiction of the Court to hear the appeal in light of s. 13(2) of the Court of Appeal Act, which came into force in July 2022. Pursuant to that section, an appeal may not be brought to the court (a) from a limited appeal order, unless leave to appeal is granted, or (b) from an order of an associate judge of the Supreme Court. The applicant argued that this must be interpreted to mean that where an associate judge makes a limited appeal order, it may be appealed to this court with leave. Held: application dismissed. The language in s. 13(2)(b) is plain, and precludes this appeal directly to the Court of Appeal. The appeal must be brought first to a judge of the Supreme Court of British Columbia.

Reasons for Judgment of the Honourable Madam Justice Saunders:

[1] Grace Mtn. Land Company, Ltd., and Herkenn Singh Kenny Braich, also known as Kenny Braich, applied for leave to appeal an order made by an associate judge of the Supreme Court of British Columbia. The proposed appeal arises from foreclosure proceedings related to approximately 64 acres of land located in Mission, British Columbia. The lands are encompassed in six titles that are owned by the applicant, Grace Mtn. Land Company, Ltd. The respondent 1055249 BC Ltd. is the mortgagee and petitioner in the underlying proceeding.

[2] This leave to appeal application engaged the jurisdiction of the Court to entertain the appeal, in light of s. 13 of the *Court of Appeal Act*, S.B.C. 2021, c. 6.

[3] On July 19, 2024 I dismissed the leave application with reasons to follow. These are the reasons.

[4] On May 22, 2024 Associate Judge Robertson dismissed the applicant's motion for an extension of the redemption period, and granted the respondent's application for an order absolute. That order is the subject of the leave to appeal application. The applicant contends that the associate judge failed to properly assess the evidence, relied on an irrelevant factor, and erred in the assessment of costs.

[5] Before consideration of the substance of the leave to appeal application, the issue of jurisdiction of this Court to entertain the appeal required resolution. I have heard submissions on that issue only.

[6] Prior to passage of what I will call the "new *Act*", being the *Court of Appeal Act* passed in 2021 and proclaimed into force July 15, 2022, s. 6 of the former *Court of Appeal Act* allowed an appeal to be brought from the order of a master, within the usual 30-day time period for appeal: *Nanak's Industries (1984) Ltd. v. Takhar*, 2019 BCCA 134 (Chambers) per Tysoe J.A.

[7] Additionally, prior to July 1, 2019, R. 23-6 of the *Supreme Court Civil Rules* allowed for an appeal of "an order or decision of a master, registrar, or special referee" to the Supreme Court of British Columbia. Thus there were then two practical avenues of appeal from a master's order: to a judge of this court with or without leave depending on the character of the order, and to the Supreme Court of British Columbia. The resulting order from an appeal to the Supreme Court of British Columbia was itself subject to the appeal provisions of this court.

[8] The provisions of the *Supreme Court Civil Rules* relating to an appeal from a master's order were repealed and replaced effective July 1, 2019. The now more complete process for such an appeal is provided by the revised R. 23-6.

[9] Along the way, the term "master" was modernized to the term "associate judge".

[10] Since July 18, 2022, s. 13 of the *Court of Appeal Act* provides:

> 13 (1) An appeal may be brought to the court
>
> (a) from an order of
>
> (i) the Supreme Court, or
>
> (ii) a judge of the Supreme Court, or
>
> (b) in any matter for which jurisdiction is given to the court under an enactment of British Columbia or Canada.

> (2) Despite subsection (1), an appeal may not be brought to the court
>
> (a) from a limited appeal order, unless leave to appeal is granted by a justice, or
>
> (b) from an order of an associate judge of the Supreme Court.
>
> ...

[11] On its face, s. 13 allows for appeals from orders made by the Supreme Court of British Columbia as of right, subject to two exceptions. Those exceptions are appeals from limited appeal orders, defined in the new *Act* as ones described in the *Court of Appeal Rules* which require leave to appeal, the other being orders from associate judges.

[12] The applicants contend that s. 13(2)(a) allows for appeals of all limited appeal orders including those made by an associate judge or a registrar, and s. 13(2)(b) applies to all other orders made by an associate judge.

[13] The applicants observe that s. 13(1) of the new *Act* provides for an appeal from both an order of the Supreme Court, and a judge of the Supreme Court, thereby anticipating that not all orders appealed under that section shall be one made by judges. In the applicants' submission, both registrars and associate judges are persons who fit within the provision of s. 13(1)(a)(i), who may make a limited appeal order within the meaning of the *Court of Appeal Rules*.

[14] That being so, and s. 13(2)(a) contemplating coverage of limited appeal orders, the applicants say subsection (b) should be read as applying to those orders of an associate judge that are not limited appeal orders. Such orders would include orders for summary judgment under R. 9-6, orders striking pleadings under R. 9-5(1) (absent determination of a question of law), and orders granting judgment in default.

[15] To conclude otherwise, says the applicant, is to allow certain orders made by a registrar to be appealable under s. 13(2)(a) whereas such orders, if made by an associate judge, would be appealable only after completion of the appeal process provided in the *Supreme Court Rules*. This result, they say, is irregular and points to the correctness of the interpretation for which they advocate.

[16] The respondent refers to the well-known approach to statutory interpretation set out in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1988] 1 S.C.R. 27, *R. v. Alex*, 2017 SCC 37 and *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, the core of which comes from Elmer Dreidger in *Construction of Statutes* (2nd ed. 1983):

> …the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

Rizzo at para. 21.

[17] In the respondent's submission, s. 13(2)(b) is written in the clearest language possible, and there is no ambiguity allowing for an interpretation other than that an appeal from any order of an associate judge must come through the appeal of Supreme Court of British Columbia, whereby the result will be reflected in a Supreme Court order which then would be appealable to this court. The respondent says that R. 23-6 of the *Supreme Court Civil Rules* bears upon the meaning of s. 13 of the new *Act*. In particular it says that the word "appeal" in R. 23-6 applies to require all appeals of associate judges and registrars to be brought first to the Supreme Court of British Columbia.

[18] I cannot say that the *Supreme Court Civil Rules*, a regulation under the *Supreme Court Act*, R.S.B.C. 1996, c. 443, assist in interpreting this court's constating statute. In *Ravnyshyn v. Drys*, 2006 BCCA 20 (Chambers), it is said:

> [17] While provisions in one statute may define a term used in another statute, or be used as an aid in interpreting a provision in another statute, the same influence is not exerted by a regulation under one statute on a provision in another statute. That is, I think it is inevitable that a new definition in our *Rules* (which have the character of a regulation) will have little impact upon the meaning of a term in the *Land Title Act* that has long existed and that has been the subject of this Court's interpretation.

[19] The answer to the jurisdiction question in this case is resolved simply on the language of s. 13. It appears to me to be plain. There is no qualification in s. 13 to the nature of the order made by an associate judge referred to in s. 13(2)(b) and I can see no proper basis on which to apply it to only certain orders made by an associate judge.

[20] Accordingly I conclude that the natural import of the words used in s. 13(2)(b) preclude an appeal directly to this court from the order in issue, and that the subject matter of such an order may only be addressed by this court after a judge of the Supreme Court has made an order in respect to it.

[21] By these comments I do not address the interesting question of an appeal directly to this court from a determination by a registrar. That is a question that must await a case in which the issue arises.

[22] It is for these reasons that the application for leave to appeal was dismissed on July 19, 2024.

"The Honourable Madam Justice Saunders"