

# COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Dr. C.A. Whittington Inc. v. The Owners,  
Strata Plan VR 2027,*  
2023 BCCA 362

Date: 20230921  
Docket: CA48524

Between:

**Dr. C.A. Whittington Inc.**

Appellant  
(Respondent)

And

**The Owners, Strata Plan VR 2027**

Respondent  
(Petitioner)

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

On appeal from: An order of the Supreme Court of British Columbia, dated  
August 8, 2022 (*The Owners, Strata Plan VR 2027 v. Dr. C.A. Whittington Inc.*,  
2022 BCSC 1335, Vancouver Docket S2012676).

The Appellant appearing in person: C. Whittington

Representative for the Respondent: H. Wuigk

Place and Date of Hearing: Vancouver, British Columbia  
September 6, 2023

Place and Date of Judgment: Vancouver, British Columbia  
September 21, 2023

**Summary:**

*The appellant applies for an order to extend the time to file and serve the Appeal Record and transcripts of various proceedings in the Supreme Court, submitting that it is in the interests of justice that her application for extensions of time be granted. Held: Appeal dismissed. The appellant has not provided a satisfactory explanation for failing to file the Appeal Record nor the delay in obtaining the transcripts or that the corrections she intends to make to them are necessary to argue the issues on appeal. The respondent will sustain real prejudice if the application is granted in the form of significant legal expenses that are already in excess of \$300,000.*

**Reasons for Judgment of the Honourable Mr. Justice Abrioux:**

**Introduction**

[1] The appellant, Dr. C.A. Whittington Inc. (“CAW”) applies for an order pursuant to s. 32(2) of the *Court of Appeal Act*, S.B.C. 2021, c. 6 [Act] to extend the time to file and serve the Appeal Record and a transcript of proceedings in the Supreme Court. She does not provide a date by which this can occur, anticipating it will take until the end of 2023 before the transcript can be filed. The respondent Strata Corporation opposes the application.

[2] The order under appeal was pronounced on August 8, 2022 and was made upon the hearing of a petition brought by the respondent Strata Corporation in which it sought, *inter alia*, judgment against CAW for amounts owing pursuant to special levies approved by the owners. Having declined CAW’s application to have the petition referred to the trial list, the judge granted judgment in favour of the Strata Corporation with a reference to the Registrar to determine the amount owing. He also ordered the sale of CAW’s unit in the event she failed to satisfy the amount owing once it had been determined.

[3] The Notice of Appeal was filed on September 7, 2022 and I became case management judge on February 22, 2023. There have been several applications in this Court. On March 15, 2023, I granted CAW an order staying the proceedings in the Supreme Court until the disposition of the appeal. There have been further

orders made at various case management conferences, some of which I shall refer to below.

[4] This application was heard one day shy of a year since the filing of the Notice of Appeal and CAW has yet to file an Appeal Record or transcript.

[5] For the reasons that follow I would dismiss the application for extensions of time.

**Background**

[6] The pertinent background is summarized in the reasons for judgment which are indexed at 2022 BCSC 1335. The basis of the claim as outlined by the judge was that:

[1] The petitioner is a strata corporation in a multi-unit residential building near the gondola in Whistler Village, British Columbia. As provided in the *Strata Property Act*, S.B.C. 1998, c. 43 [SPA], the petitioner is made up of owners of individual strata lots who share ownership of those parts of the building and grounds that are common property, all as provided in a strata plan registered in the Land Title Office. The respondent, Dr. C.A. Whittington Inc., is one of these owners. It is owned by Dr. Christine Whittington, who appeared on its behalf at the hearing of this proceeding with leave of the court.

...

[3] The owners of Strata 2027 voted to impose four special levies upon themselves. CAW refused to pay the special levies. Strata 2027 registered a lien against CAW's strata lot and now seeks judgment against CAW and an order for the sale of the lot to secure payment of CAW's share of the special levies and its reasonable legal costs. This is a statutory claim contemplated by ss. 112 to 118 of the SPA.

**The Chambers Decision**

[7] The judge outlined CAW's position:

[4] CAW opposes the claim. While her submission is exceptionally technical and wide-ranging, at the heart of Dr. Whittington's argument lies the factual proposition that the special levies are "designed to take title from a legitimate owner imposed by persons with a Conflict of Interest; using the corrective measure of forfeiture of property so that the persons who instituted these Special Levies may benefit from Identity Theft and mortgage fraud". Dr. Whittington further argues that CAW cannot afford to pay the amount claimed and will suffer hardship if its strata lot is sold by court order.

[8] The judge did not accept these arguments concluding that her factual proposition “is not supported by the evidence. Nor is there merit to her other arguments”: at para. 5, then concluding:

[6] The reason the strata corporation is entitled to claim the lien is easy to discern. If CAW does not pay its share, the only alternative to the imposition of a lien on CAW’s strata lot for the amount owing would be to leave the other owners to make up the difference and support CAW as a free rider. As a practical matter, other free riders would soon emerge.

[7] Strata 2027 has proved at least part of its claim and is entitled to judgment. Section 117(3) of the *SPA* affords the court a discretion in deciding whether to enforce the lien by an order for sale. There is nothing in the circumstances of this case to justify a denial of enforcement at the expense of the other owners. Accordingly, for the reasons that follow, I allow Strata 2027’s claim.

### **Post Hearing Developments**

[9] The reasons for judgment were rendered on August 8, 2022. In the timeframe thereafter, the parties exchanged correspondence in an attempt to settle the terms of the order with counsel for the Strata Corporation seeking to have a further appearance before the judge.

[10] On September 6, 2022, the Strata Corporation filed a Notice of Appeal in the Court of Appeal under case file number CA48520 (the “Strata Appeal”). As I have noted, on September 7, 2022, CAW filed her Notice of Appeal under file number CA48524 (the “Whittington Appeal”). On September 16, 2022, counsel for the Strata Corporation requested CAW’s agreement to consolidate both appeals and on September 20, 2022, the Strata Corporation filed and served a Notice of Cross Appeal in the Whittington Appeal (the “Cross Appeal”).

[11] The parties were unable to agree on a draft order (the “Order”) to reflect the reasons for judgment and attempts were made to schedule a further hearing before the judge. In the meanwhile, CAW had set down an application in this Court seeking both leave to appeal the judge’s order and a stay of proceedings.

[12] On October 26, 2022, CAW agreed to adjourn the Leave and Stay Application until the terms of the Order could be settled but would not agree to consolidate the

Strata Appeal and the Whittington Appeal on the basis that she did not trust the Strata Corporation or its legal counsel. Counsel then advised CAW that the appeal deadlines for the Strata Appeal continued to run despite the pending Leave and Stay Application and that a consent order would be required to extend the appeal deadlines.

[13] On November 3, 2022, the Strata Corporation filed its appeal record and transcript in the Strata Appeal.

[14] On November 15, 2022, the judge settled the terms of the order arising from the reasons for judgment. He also dismissed an application which had been brought by CAW that he recuse himself due to an alleged conflict of interest. The order was then entered on November 16, 2022.

[15] On November 16, 2022 as a result of the Order being settled by the judge, the Strata Corporation abandoned both the Strata Appeal and the Cross Appeal.

[16] At a case management conference on February 22, 2023, having decided that leave to appeal was not required, I made a number of orders including that CAW:

- File and serve an Amended Notice of Appeal by 4:00 p.m. on February 24, 2023; and
- File and serve an Appeal Record and transcript “not more than 60 days from the date of this Order”.

[17] CAW did file the Amended Notice of Appeal in compliance with my order and on March 15, 2023 I heard the Leave and Stay Application which I have referred to above.

[18] As a result of communications with the Registry concerning further case management, Registrar Outerbridge wrote to the parties on June 30, 2023 advising them that:

I make the following directions:

1. Case Management: The parties are directed to attend case management on 26 July 2023 at 9:15am.

...

2. Extension of Time to File Appeal Record and Transcript: Dr. Whittington has not filed an appeal record and transcript. She is out of time to do so. There may be good reasons for the delay; however, a case management judge cannot grant an extension of time.

Accordingly, unless the parties can agree on an extension of time for the appeal record and transcript to be filed and served, Dr. Whittington must bring an extension of time application returnable at the case management hearing above, where Mr. Justice Abrioux may sit as a chambers judge to hear it.

The application must be brought in conformity with the requirements of the *Court of Appeal Rules*, specifically Part 9 and the timelines within.

As part of that application, Dr. Whittington must:

- 1 Identify the transcript(s) or portions thereof that she wishes to place before the Court;
- 2 Explain the reasons for the delay and any additional relevant facts to the extension of time issue;
- 3 With appropriate modifications for the circumstances here, address the legal test for an extension of time set out in *Davies v. C.I.B.C.* (1987), 15 B.C.L.R. (2d) 256 (C.A.), namely:
  - 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?

For the purposes of this application, no party may file written argument that is lengthier than seven (7) single-spaced pages. The parties are reminded to focus their submissions on the issues above and avoid controversies that are not strictly relevant to the issues on the application.

[19] The parties were also advised that the appeal was set to go inactive pursuant to Rule 50(1) on September 8, 2023.

[20] At a case management conference which took place on July 26, 2023, CAW advised the Court of difficulties that she was continuing to experience in filing her transcript, a matter I shall return to below. I advised CAW that the appeal would be

moved to the inactive list on September 8, 2023 if extensions of time were not granted by the Court. I then provided directions regarding the setting down of CAW's application to have the time limits extended for filing her Appeal Record and transcript with the application to be heard on September 6, 2023, that is two days before the appeal would be placed on the inactive list.

### **The Extension of Time Application**

#### ***Positions of the Parties***

[21] CAW's position is that it is in the interests of justice that her application for extensions of time be granted. She says that she first became aware of the existence of the Strata Corporation's transcript in the Strata Appeal in late December 2022 or early January 2023. She says that counsel for the Strata Corporation would not provide her with a copy unless she paid a significant amount of money and she only later obtained a partial transcript from the Court of Appeal Registry. At that time, she noticed what she considered to be several material errors which she has spent several months attempting to correct with the assistance of the transcription services and which include:

- Identification of the wrong strata plan;
- Alleged errors re identifying both the appellant and the respondent; and
- Numerous "indecipherable" notations which she believes may well result from poor recording and sound levels on the days of the hearings.

[22] She indicated to the Court that she now has an order from the Supreme Court to listen to the DARS recordings and she anticipates that she will have to review much of those recordings with the transcribers so that the transcript can be corrected, a process she anticipates will likely not be completed until the end of 2023.

[23] Central to CAW's submission is that she wishes to place before the Court "complete and accurate transcripts for all matters heard on June 21–23, 2022 and

November 15, 23 [sic] and comments made by Mr. Justice Gomery. Information in both recordings and transcripts have direct relevance to this Appeal”.

[24] CAW says that although her complaints as to the identification of her unit have now been corrected, the judge’s order that her unit be sold cannot stand since it was made in relation to an improper legal description.

[25] In her written submission on this application, CAW seeks an additional order being:

[F]or a forensic audit to be conducted back 10 years on all accounts of the strata(s) using “02027” to be paid for by “The Owners, Strata Plan VR 2027”.

[26] CAW also makes serious allegations against the Strata Corporation’s legal counsel which include altering the transcript which was filed in the Strata Appeal.

[27] The Strata Corporation’s position is that it has been greatly prejudiced by CAW’s failure to prosecute her appeal in a diligent manner. It says that there is no question that funds are owing to it as a result of CAW not paying her portion of the special levies and there is no merit to the appeal.

[28] It also submits that:

The Strata is a modest condo corporation consisting of 22 owners. If any owner does not pay their fees, it affects all owners. Most troubling to the Strata, are the escalating costs of this proceeding due to the conduct of this litigation. In Justice Gomery’s decision, he sets out the costs as being in excess of \$122,000. These costs are now in excess of \$320,000 to enforce a modest lien. The Strata has exhausted its legal fund and cannot authorise its lawyers to prepare legal argument until more funds are raised. Even when those additional funds have been raised, once those funds are exhausted, it is likely more funding will not be approved and the Strata will be forced to abandon the enforcement of this lien.

If this proceeding is allowed to continue in this fashion, it will signal to all owners that they need not pay their strata fees and can use Court processes to drive up the costs for the Strata to the point where the Strata cannot continue the litigation. Such a precedent would have an impact not only on the Strata but on the administration of the SPA for all strata corporations.

[29] I would add that a representative of the Strata Corporation, not legal counsel, appeared at the hearing of this application.

***Discussion***

[30] A party wishing to bring an appeal must file a notice of appeal and serve it on the respondent within 30 days of the day after the pronouncement of judgment: *Court of Appeal Rules*, B.C. Reg. 120/2022 [*Rules*], Rule 6. The appeal record and transcripts must be filed not more than 60 days after filing of the notice of appeal, and the factum must be filed not more than 30 days after filing of the appeal record: Rules 23(1), 24(2) and 25(1).

[31] Pursuant to s. 32(2) of the *Act*, a justice may extend a time limit provided in the *Act* or *Rules* for doing an act, including extending the time to serve the notice of appeal and the filing of a factum.

[32] The Registrar set out the *Davies* factors in his correspondence to the parties of June 30, 2023. This application involves the last three of those factors and in particular the overall rubric of the interests of justice.

[33] I have concluded, for several reasons, that the application should be dismissed.

[34] First of all, CAW has not complied with the case management order of February 23, 2023. While she offers an explanation for not having filed a transcript within 60 days of that order, there is none provided for not filing the Appeal Record in that time frame except to say that she was confused by what was required and believed both had to be filed at the same time. Needless to say, that is not what the order provides.

[35] Secondly, the fact remains that the transcript which CAW seeks to file is an amended version, I take it, of what the Strata Corporation had filed in its appeal on November 3, 2022. It appears that CAW took no steps to have her own transcript prepared until some point in 2023.

[36] While I do accept that CAW was making attempts to have the transcript in question corrected in 2023, I cannot ignore the context of what the purpose of those corrections is intended to address.

[37] It appears that on appeal, CAW will be attempting to reargue many of the issues which the judge described in his reasons as “exceptionally technical and wide ranging”: at para. 4.

[38] For example, at para. 2 of the reasons the judge observed:

[2] Names are important in this proceeding. Dr. Whittington ascribes significance to subtle differences in nomenclature, such as the presence or absence of periods or spaces in different versions of the petitioner’s name, or the presence or absence of an incorporation number in documents referencing the respondent.

[39] Of significance on this application, in particular the reasons advanced for the need for “complete and accurate transcripts” are the judge’s observations and findings that:

[10] Pointing to discrepancies in the description of CAW and Strata 2027 in land title documents, correspondence, municipal permits, and other documents, Dr. Whittington contends that there are multiple legal entities with very similar names. Dr. Whittington believes that at least some of the discrepancies were introduced deliberately, for fraudulent purposes.

[11] For example, Dr. Whittington distinguishes between a version of CAW that includes its incorporation number, and an entity of the same name without the incorporation number. In her submission, including the incorporation number designates a different corporate entity. Dr. Whittington also ascribes significance to a typographical error by which a “0” in the incorporation number was replaced by a capital “O” in some versions of the name. All of this is legally unsound. The corporation is the same whether or not the incorporation number is listed. A misdescription of an entity does not result in the creation of a second entity with distinct legal rights.

[12] Similarly, there are discrepancies in the description of Strata 2027 in land title records and other documentation. For example, it is described variously as: “The Owners, Strata Plan Vr. 2027”, “The Owners, Strata Plan VR. 2027”, “The Owners, Strata Plan VR2027”, “The Owners, Strata Plan VAS2027”, and so on. None of these discrepancies is legally significant. A strata corporation is constituted by the deposit in the land title office of a strata plan which is assigned a reference number. In this case, the registrar of land titles numbered the plan 2027. The plan number is the critical element in the description. There is only one strata corporation numbered 2027 in the New Westminster Land Title District. The practice in the Land Title Office

concerning the use of prefixes such as “VR”, “Vr”, and “VAS” has evolved over the years, without substantive legal effect. The presence or absence of periods or spaces in the description of the strata corporation is irrelevant.

[40] I am not persuaded that the delay in obtaining a transcript in the format CAW appears to believe is required is necessary to advance her arguments on these issues on appeal. She has also not, in my view, properly complied with directions 1 and 2 in the Registrar’s letter to the parties of June 30, 2023. And, in any event, CAW has not provided a satisfactory explanation as why it will take, on her estimation, until the end of 2023 to have a transcript prepared in relation to a Notice of Appeal which was filed on September 7, 2022.

[41] I next turn to the question of prejudice to the Strata Corporation. I am satisfied that it will sustain real prejudice if the application is granted, being significant legal expenses in addition to an amount which is already in excess of \$300,000 to this self described “modest” strata corporation.

[42] As to the merits of the appeal, in my reasons granting CAW a stay of proceedings on March 15, 2023 I said:

[13] I need not specifically address the merits to the appeal since the respondent is agreeing the limited stay should be ordered. I will, however, note that on the merits investigation spectrum, while the appeal is not—at least based on the materials which I have seen—bound to fail, I must certainly put it at the lower end of that spectrum.

[43] In light of further attendances by the parties since that time and having heard in greater detail from CAW as to the issues on appeal, including on this application, I consider my impressions on March 15, 2023 as to the merits of the appeal to be quite generous.

[44] In large part, that is because there can be no doubt that amounts are owing by CAW for her portion of the special levies. There is also the fact that the complaints which CAW raised with the judge and which are referred to at paras. 10 and 11 of the reasons are either of no moment (para. 10) or are now moot (para. 11).

[45] Accordingly, when I consider:

- It has now been effectively one year since the Notice of Appeal was filed;
- No Appeal Record or transcript has been filed notwithstanding the order of February 22, 2023;
- CAW’s explanation for the need for additional time to have what she considers to be a complete and accurate transcript in relation to the issues on appeal;
- CAW’s failure to properly comply with the Registrar’s directions of June 30, 2023;
- The clear prejudice to the Strata Corporation if the application were to be granted; and
- An appeal whose merits are marginal, at best,

I conclude that it is not in the interests of justice to grant the application.

**Disposition**

[46] The application for an extension of time to file the appellant’s Appeal Record and transcript is dismissed.

[47] It follows that the appeal is also dismissed as abandoned.

“The Honourable Mr. Justice Abrioux”