COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Mpania v. Yassa,*
2024 BCCA 287

Date: 20240730
Docket: CA49817

Between:

Roger Mpania

Appellant
(Petitioner)

And

Usama Yassa and Shirin Yassa

Respondents
(Respondents)

Before: The Honourable Madam Justice Fenlon
(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated April 17, 2024 (*Mpania v. Yassa*, Vancouver Docket S241160).

Oral Reasons for Judgment

The Appellant, appearing in person: R. Mpania

No one appearing on behalf of the Respondents

Place and Date of Hearing: Vancouver, British Columbia
July 30, 2024

Place and Date of Judgment: Vancouver, British Columbia
July 30, 2024

Summary:

The appellant applies for an extension of time to file his factum and appeal book. Held: Application dismissed. While the respondents would not be prejudiced by the extension, it is clear the appeal is bound to fail. It would not be in the interests of justice to grant the extension of time.

[1] **FENLON J.A.**: The applicant, Mr. Roger Mpania, seeks an extension of time to file his factum and appeal book in the appeal CA49817.

[2] Mr. Mpania signed a residential lease in March 2022. The property suffered water damage in November 2022 and repairs were undertaken. Mr. Mpania withheld rent for December and January on the basis of that interference. He applied to the Residential Tenancy Branch for rent reduction and the respondent landlords cross-applied for possession.

[3] The applications were heard over two days in April 2023. The landlords were successful in obtaining an order for possession along with a monetary order. Mr. Mpania applied for a review of that decision. On April 27, 2023 the reviewing arbitrator confirmed the original decision giving the landlord possession. Mr. Mpania paid the amount ordered and moved out of the unit on April 30, 2023.

[4] Subsequent applications were brought by both Mr. Mpania and the landlords. Mr. Mpania claimed compensation for loss of quiet enjoyment, but was unsuccessful. The landlord filed an application for loss of rental income. This application was heard in December 2023. The arbitrator issued a decision on January 13, 2024, awarding the landlords $1,743 which included lost rental income for the month of May 2023, a professional cleaning invoice, and a filing fee. The arbitrator found that the initial applications were brought to a final conclusion in late April and that the landlords did not have sufficient time to advertise and find a new tenant for May. As the landlord did not advertise until well into June or July 2023, the arbitrator disallowed their claim for loss of rent in the months following May.

[5] Mr. Mpania applied for judicial review of this decision. He argued that the arbitrator erred by failing to apply s. 7(2) of the *Residential Tenancy Act*, S.B.C.

2002, c. 78 which states that landlords claiming compensation must do “whatever is reasonable to minimize the damage or loss”.

[6] Justice Caldwell heard the judicial review petition on April 17, 2024. He concluded that the decision was not patently unreasonable. Since Mr. Mpania had not moved out until the last day of April, the judge concluded it was not patently unreasonable for the arbitrator to require the respondents to begin advertising only after the unit was actually vacated.

[7] Mr. Mpania filed a notice of appeal on May 7. Respondents’ counsel advised Mr. Mpania, in writing, that the respondents would not be taking a position on the appeal (and indeed, I note that they were not present on this application). Mr. Mpania filed an appeal record on June 5, 2024. Under R. 25(1) and 26(2) of the *Court of Appeal Rules*, B.C. Reg. 120/2022, he was required to file his factum and appeal book by July 5. On July 22, Mr. Mpania filed this chambers application seeking an extension of time to file.

[8] The legal framework that applies to an application for an extension of time is well settled. It is set out in *Davies v. C.I.B.C.* (1987), 15 B.C.L.R. (2d) 256 at 259–260 (C.A.):

1) Was there a *bona fide* intention to appeal?

2) When were the respondents informed of the intention?

3) Would the respondents be unduly prejudiced by an extension of time?

4) Is there merit in the appeal?

5) Is it in the interest of justice that an extension be granted?

[9] There is generally a greater willingness to extend the time to prosecute a step in the appeal then to file the notice of appeal: *0742848 B.C. Ltd. v. 426008 B.C. Ltd.*, 2020 BCCA 67 at para. 25.

[10] I accept that Mr. Mpania had a *bona fide* intention to appeal and that the landlords were aware of it and would not be prejudiced by the relatively brief extension that is being sought. As I stated during the hearing, the real issue is whether there is any merit to the appeal and whether it is in the interests of justice to grant the extension sought.

[11] Mr. Mpania argues that Policy Guideline 5 of the Residential Tenancy Branch obligates a landlord, in very clear language, to begin taking steps to mitigate the loss that they are claiming compensation for as soon as they become aware of it. In this case, Mr. Mpania says that that obligation extended to the landlords beginning to advertise to relet the apartment as soon as they gave him notice to end tenancy, even if he disputed the notice (as he did) and even if a review followed.

[12] I have read the Policy Guideline. I accept, in accordance with the case cited to me by Mr. Mpania—*Sandhu v. Gill*, 2024 BCSC 412—that an arbitrator at the Residential Tenancy Branch is required to consider the Guideline and apply it.

[13] What I cannot accept, with respect, is the submission that the Policy Guideline compels a landlord, in these circumstances, to take steps before the landlord is certain of the outcome of a challenge to their notice to end tenancy. The plain and ordinary meaning of the mitigation requirement in the Policy Guideline, read in context, is that the obligation to take steps to advertise comes into play at each step of the process when there is finality and certainty. Thus, if there is a notice to vacate and the tenant complies, that is when the obligation begins. If the notice to end tenancy is disputed, it begins when the dispute is resolved. If there is a review, then the obligation begins when the review ends and the decision is delivered. Here, the final decision in this disputed process was delivered on April 27, 2023. In my view, it was reasonable for the arbitrator to conclude that no obligation to advertise arose before then. Mr. Mpania points to evidence that the Landlord began advertising in May.

[14] The standard of review on an appeal like this one is the highly deferential standard of patent unreasonableness. It has been said to involve a decision by an

arbitrator that is bordering on the absurd. In my view, considering the merits of this appeal, there is no prospect a division of this Court would find that the arbitrator's decision to give the landlords one-month leeway after Mr. Mpania moved out to advertise and find a tenant for June 1, amounts to a patently unreasonable decision.

[15] I conclude that the appeal is bound to fail. I recognize that Mr. Mpania filed the notice of appeal on time, and that he is prepared to continue to meet future deadlines. But, there is, in my view, absolutely no prospect of success on appeal and it is therefore not in the interests of justice to permit this appeal to continue.

[16] For these reasons, I would not grant the extension sought. The appeal is, accordingly, dismissed as abandoned.

"The Honourable Madam Justice Fenlon"