

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Robinson v. Bevilacqua*,
2024 BCCA 300

Date: 20240812
Docket: CA50018

Between:

Lucas William Robert Robinson

Appellant
(Defendant)

And

**Giovanni Alfredo Bevilacqua also known as
John Alfred Bevilacqua**

Respondent
(Plaintiff)

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

On appeal from: An order of the Supreme Court of British Columbia, dated
September 1, 2023 (*Bevilacqua v. Robinson*, 2023 BCSC 1548,
New Westminster Docket S172891).

Oral Reasons for Judgment

Counsel for the Appellant:

G.F.T Gregory
A. Sodagar

Counsel for the Respondent:

B.M. Gordon

Place and Date of Hearing:

Vancouver, British Columbia
August 12, 2024

Place and Date of Judgment:

Vancouver, British Columbia
August 12, 2024

Summary:

The applicant applies for an extension of time to appeal an order dismissing his application to set aside a Registrar's report concerning his interests in a property. Held: application dismissed. The judge referred the matter back to the Registrar for an updated report setting out the applicant's current defined interest in the property. The judge effectively provided the applicant with the relief sought. He will be able to raise the very issues he says were not properly considered with respect to the report at the new hearing.

ABRIOUX J.A.:**Background**

[1] The appellant, Lucas Robinson, applies for an extension of time to appeal the order of Justice Walkem pronounced September 1, 2023. The order was made in the context of protracted proceedings involving the sale of a family farm (Loranda Farms) located in Chilliwack, BC. The judge ordered, in part, that the matter be referred back to the Registrar for the preparation of an updated report setting out the defined interests of the parties in Loranda Farms.

[2] The parties disagree as to whether Mr. Robinson requires leave to appeal the order. Since I have concluded the application should be dismissed, it is not necessary to resolve that issue.

Facts

[3] Mr. Robinson jointly owns Loranda Farms with his sister Micaela Robinson. The respondent, Giovanni Bevilacqua, was Mr. Robinson's uncle. In 2014, Mr. Bevilacqua brought a proceeding against Mr. Robinson claiming that Mr. Robinson misused his power of attorney. He obtained an order for judgment against Mr. Robinson for \$700,000 of which approximately \$500,000 remains outstanding.

[4] Mr. Bevilacqua has since passed away. In October 2019, his estate brought an application pursuant to the *Court Order Enforcement Act*, R.S.B.C. 1996, c. 78 [COEA] to show cause as to why Mr. Robinson's interest in Loranda Farms should not be sold.

[5] Mr. Robinson failed to appear to the show cause hearing on November 6, 2019. At that time, pursuant to s. 92 of the COEA, Associate Judge Dick ordered an inquiry by the Registrar into, among other things, Mr. Robinson's interest in the land; judgments, liens or charges against the land and their priority; and distribution of sale proceeds. The Registrar was ordered to report their findings to the court.

[6] Registrar Nielsen (as he then was) held a hearing on December 11, 2019 and prepared a report. Mr. Robinson failed to appear at the hearing. Registrar Nielsen's report identified Mr. Robinson as "the register[ed] owner of an undivided one half interest in fee simple of the Lands but a beneficial owner of less than an undivided one half interest in fee simple". He also identified four liens and charges against Loranda Farms.

[7] Mr. Bevilacqua's estate applied for approval of the Registrar's Report. Mr. Robinson did not appear at that hearing which occurred on January 8, 2020. Associate Judge Keighley approved the Registrar's Report and ordered that Mr. Robinson's interest in the land be sold in satisfaction of the judgment.

[8] Despite marketing efforts, limited offers were made to purchase Mr. Robinson's interest in the property. Ms. Robinson who holds the other half interest made the only offer to purchase Mr. Robinson's interest for \$400,000. Mr. Bevilacqua's estate has been unsuccessful in obtaining an order to approve the sale since issues have arisen which include Mr. Robinson's precise interest in Loranda Farms and the effect that would have on the propriety of any offer to purchase that interest, in particular the offers made by Ms. Robinson at various times for \$400,000.

[9] On January 24, 2022, Mr. Robinson filed an application seeking to set aside Associate Judge Dick's order authorizing the Registrar's inquiry; the Registrar's report dated December 11, 2019; and the order of Associate Judge Keighley authorizing the sale of Mr. Robinson's interest.

Reasons for judgment

[10] The judge dismissed Mr. Robinson’s application on September 1, 2023 in reasons indexed at 2023 BCSC 1548.

[11] She provided a procedural history and observed that Mr. Robinson sought to set aside the report on the basis that certain alleged essential parties were not served with the material. These included Mr. Gregory, counsel for Mr. Robinson, who had a registered judgment against Mr. Robinson’s interest in the property on account of non-payment of fees. Mr. Gregory, who was not representing Mr. Robinson at the time, was not provided notice of the show cause hearing or the Registrar’s hearing. Mr. Robinson argued that the failure to provide notice to Mr. Gregory rendered the report a nullity pursuant to s. 94(4) of the *COEA* which requires the Registrar to serve all persons affected by the inquiry. He also argued that the report failed to account for money he was owed from his sister for rent and insurance proceeds and stated that the report was no longer valid due to significant changes in liens registered against the property.

[12] Mr. Robinson also submitted that the report’s description of Mr. Robinson as the “beneficial owner of less than an undivided one half interest [in the estate] in fee simple” was confusing and responsible for the difficulty in marketing and obtaining offers. According to Mr. Robinson, this description limited the prospective purchasing pool to just his sister and at a significantly reduced price.

[13] The judge accepted that Mr. Gregory was not provided with notice of the two hearings and that this contravened the *COEA*. However, she noted that Mr. Gregory became aware of the report in January 2020, shortly after its release when he resumed being counsel for Mr. Robinson in this matter and appeared before Associate Judge Keighley. Mr. Robinson had also failed to raise the issue of lack of notice until January 2022 when the application to set aside the report was filed. The judge stated that while “there may be some merit to [Mr. Robinson’s] claim worthy of investigation”, she could not find that it would be in the interests of justice to set

aside the report or Associate Judge Keighley's order authorizing the sale on the basis of lack of notice: at para. 53.

[14] Nevertheless, the judge accepted that three and a half years had passed since the report was issued and that changes as to the status of the liens may have taken place. There was also, in her view, a lack of clarity as to the interest which was subject to sale. As such, the judge referred the matter back to the Registrar for preparation of an updated report setting out the defined interests of the parties in Loranda Farms and to provide a recommendation to the court.

Notice of appeal and application for extension

[15] The judge's order was pronounced on September 1, 2023. Pursuant to Rule 6(2)(a) of the *Court of Appeal Rules*, B.C. Reg. 120/2022, the notice of appeal needed to be filed by October 2, 2023.

[16] Mr. Robinson filed his notice of appeal on July 18, 2024. He was thus, approximately nine and a half months out of time to do so.

[17] In deciding whether to extend the time to appeal, I must consider the following factors set out in *Davies v. C.I.B.C.*, 15 B.C.L.R. (2d) 256 at 259–260, 1987 CanLII 2608 (C.A.):

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

[18] The burden is on the applicant to establish that the criteria are met: *Rapton v. British Columbia (Motor Vehicles)*, 2011 BCCA 71 at para. 19. The interests of

justice is the “overriding question and embraces the first four questions”: *Davies* at 260–261.

[19] The “interests of justice” also encompasses a myriad of factors including the interests of the parties and the circumstances and length of the delay: *Sielsky v. Monaghan*, 2020 BCCA 346 at para. 30, citing *Clock Holdings Ltd. v. Braich*, 2009 BCCA 437 at para. 24.

[20] The court will be less stringent in applying the *Davies* factors where the extension sought is for filing appeal materials as opposed to filing a notice of appeal: *Sielsky* at para. 20.

Discussion

[21] This application turns on whether there is merit to the appeal and whether it is in the interests of justice to grant the application for an extension of time.

[22] The Registrar’s Report dated December 11, 2019, prepared by then Registrar Nielsen, defined the defendant’s interest in Loranda Farms as follows:

2. Interest of the Judgment Debtor in the Lands

The judgment debtor’s interest in the Lands is: Lucas William Robert Robinson, the judgment debtor, is the register[ed] owner of an undivided one half interest in fee simple of the Lands but a beneficial owner of less than an undivided one half interest in fee simple and is indefeasibly entitled to less than an undivided one half interest in the estate in fee simple as at 12:43 on January 24, 2019 the date a certificate of the state of title of the Lands was obtained...

[Emphasis added by Walkem J.]

[23] The appellant’s principal submission is that the judge erred in that the Registrar was without jurisdiction to make a recommendation which encompassed beneficial interests. Accordingly, the report was a nullity. As I have noted, the judge did not accept this submission.

[24] At the hearing of this application, when asked by the Court if he had any authorities that substantiated the argument that the Registrar was without jurisdiction

to make findings regarding equitable interests, counsel replied that he did not have them with him.

[25] Counsel for Mr. Bevilacqua did refer the Court to case law which he submits is to the effect that the Registrar did indeed have the jurisdiction to make findings with respect to equitable interests. He went on to say that, in any event, the appeal had no merit since the judge, by referring the matter back to the Registrar for an updated report “setting out the current defined interests of the parties in and to the interest of the defendant, judgment debtor” will allow Mr. Robinson to address the very issues he says were not properly considered in the earlier hearings and which were the basis for the application before the judge.

[26] Counsel also confirmed that at the hearing before the Registrar, Mr. Robinson will be able to argue that the Registrar has no jurisdiction to make findings regarding equitable interests. Mr. Bevilacqua, needless to say, will advance a contrary argument but he accepts that Mr. Robinson can present that argument.

[27] It is therefore not in the interests of justice to grant the application for an extension of time and I dismiss the application.

[28] I also order that the respondent receive his costs of the proceedings in this Court. Mr. Robinson was ill-prepared to argue the issue as to why the appeal had merit and I have accepted the respondent’s submission that the judge’s order effectively provided Mr. Robinson with the relief he sought before her.

“The Honourable Mr. Justice Abrioux”