COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Dick v. Vancouver City Savings Credit Union,* 2024 BCCA 364

Date: 20241024
Dockets: CA50201; CA50202

Docket: CA50201

Between:

Rodney Daniel Dick

Appellant/Applicant

And

Vancouver City Savings Credit Union

Respondent

– and –

Docket: CA50202

Between:

Rodney Daniel Dick

Appellant
(Plaintiff)

And

Wessly William Baker

Respondent
(Defendant)

Before: The Honourable Madam Justice Bennett
(In Chambers)

On an application pursuant to Orders of the Court of Appeal for British Columbia, dated June 6, 2023, in Vancouver Dockets CA49053 and CA49056, for leave to bring an application for leave to appeal orders of the Supreme Court of British Columbia, dated April 14, 2024 and August 14, 2024.

Oral Reasons for Judgment

The Appellant, on his own behalf:	R.D. Dick
Written Submissions Received by the Appellant:	October 15, 2024
Place and Date of Judgment:	Vancouver, British Columbia October 24, 2024

Summary:

The applicant sought to extend the time to file notices of application for leave to file two appeals in accordance with a vexatious litigant order made against him. Held: Applications dismissed.

BENNETT J.A.:

Nature of the Application

[1] Rodney Daniel Dick requests an extension of time to file an application for leave, and leave to commence two appeals: first, an appeal of the order of Justice Riley denying him leave to commence a civil suit against Wessly William Baker; and second, an appeal of the order of Justice MacNaughton denying him leave to commence a civil suit against Vancouver City Savings Credit Union.

[2] Mr. Dick requires leave to commence these appeals because of the order of Justice Griffin of this Court dated June 20, 2023, which declared him a vexatious litigant, and requiring him to obtain leave before commencing an appeal. That application is made in writing, with no submissions from the respondent, and no oral hearing.

[3] The proposed appeals concern different parties and subject matter however, the history of Mr. Dick's vexatious litigant orders is relevant to both, and these reasons address both of his applications.

Background

Vexatious Litigant Orders

[4] Mr. Dick and his related companies have been the subject of several vexatious litigant orders in the BC Supreme Court and the Court of Appeal from 2007 to 2023: see *Dick v. Vancouver City Savings Credit Union*, 2007 BCSC 1419 at paras. 14–15; *R.D. Backhoe Services Inc. v. Graham Construction and Engineering Inc.*, 2017 BCCA 91 at para. 33; *Dick v. Coquitlam (City)*, 2023 BCCA 261 at para. 31 (Chambers) [*Coquitlam*].

[5] Most of Mr. Dick's actions relate to the October 1998 foreclosure proceedings brought against him and his company, R.D. Backhoe, by Vancouver City Savings Credit Union. None of these actions have been successful: *Coquitlam* at paras. 4–7.

[6] The two operative orders in the present case are the December 22, 2017 order of Justice Jenkins in the Supreme Court (the "SC Order") and the June 6, 2023 order of Justice Griffin in this Court (the "CA Order"). The SC Order bars Mr. Dick, R.D. Backhoe, and another related company from commencing any new actions in the Supreme Court against any parties without leave. The CA Order bars Mr. Dick, R.D. Backhoe, and any other company he owns from bringing any appeal or application for leave to appeal without leave.

[7] Both broad orders come after increasingly restrictive orders had been placed on Mr. Dick to attempt to halt his meritless actions against Vancouver City Credit Union and others. In making the CA Order, Justice Griffin provided a detailed overview of Mr. Dick's litigation history: *Coquitlam* at paras. 7–8. She found that an order that was limited to the present appeal or parties would not go far enough, given Mr. Dick's historic abuse of the Court's process. In seven appearances before the Court of Appeal, and many more before the Supreme Court, Mr. Dick sought to relitigate the same matters, with no regard for the rules or the principle of finality of litigation. Justice Griffin concluded at para. 30:

> In short, Mr. Dick has proven himself unable to resist abusing the process of the court. He makes very little effort to file sensible and complete documents, initiating applications that then cause others to expend valuable resources trying to make sense of what he is seeking, including resources to review the lengthy and convoluted history of the litigation. This drives up the costs for opposite parties but also wastes very limited public resources devoted to staffing and running the courts, as well as wasting judicial resource. These limited resources end up being spent on his duplicative and frivolous matters, and are then less available to the people who truly need access to justice.

Proposed Action against Mr. Baker

[8] On February 8, 2024, Mr. Dick applied for leave to commence a proceeding against Mr. Baker, and his leave application was heard on April 24, 2024 by Justice Riley. He required leave because of the SC Order.

[9] The substance of Mr. Dick's claim was that Mr. Baker had failed to pay administrative costs for a property they co-own in Mexico, and therefore Mr. Baker should forfeit his right to the property.

[10] Justice Riley provided detailed reasons for denying Mr. Dick's request, indexed at *Dick v. Baker*, 2024 BCSC 658 [*Baker*].

[11] Justice Riley found the action was doomed to fail because the court did not appear to have jurisdiction over the subject matter of the claim (real property situated in another country) and the claim did not appear to exceed the $35,000 limit for small claims proceedings per s. 3 of the *Small Claims Act*, R.S.B.C. 1996, c. 430; *Small Claims Court Monetary Limit Regulation*, B.C. Reg. 179/2005.

[12] Justice Riley found that in the alternative, even if the claim passed the low merits threshold, he would exercise his discretion against allowing leave based on the totality of the circumstances. This included the jurisdictional issues with the proposed dispute, the unclear pleadings, the underlying documents being in Spanish and without translation, "all considered against Mr. Dick's background as a person who is known to commence and pursue unmeritorious claims": *Baker*, at para. 12.

Proposed Action against Vancouver City Savings Credit Union

[13] On August 14, 2024 Mr. Dick was denied leave to commence an action against the Vancouver City Savings Credit Union. This decision was made without a hearing.

[14] In denying Mr. Dick's request, Justice MacNaughton provided the following reasons: "all of the matters raised were litigated many years ago. Nothing new has occurred with respect to all three matters proposed. No prospect of success on any of them."

Timelines

[15] As a threshold issue, Mr. Dick is out of time in both his applications.

[16] The order denying leave for his proposed action against Mr. Baker was pronounced on April 24, 2024. Mr. Dick did not file an application for leave to bring an appeal until October 15, 2024. This is well outside the 30-day window provided for under R. 6(2)(a) of the *Court of Appeal Rules*, B.C. Reg. 120/2022.

[17] Likewise, the order denying leave to commence an action against Vancouver City Savings Credit Union was made on August 14, 2024. Mr. Dick filed his application for leave to appeal on October 15, 2024, more than a month past the 30-day timeline.

Legal Framework

Extension of time

[18] The test for granting an extension of time to file a notice of appeal was set out in *Davies v. CIBC*, (1987) 15 B.C.L.R. (2d) 256 at 259–260 (C.A.), and considers the following factors:

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 interests of justice that an extension be granted?

[19] In considering whether the interests of justice would be served by granting the extension, a “myriad of factors” are relevant, including “the interests of the parties and compliance with the Rules of the Court”: *Dempsey v. Pagefreezer Software Inc.*, 2023 BCCA 212, at para. 47 [*Dempsey*]. Allowing an appeal to be filed that is doomed to fail is not in the interests of justice: *Dempsey*, at para. 60.

Leave to appeal

[20] The test for leave is modified where leave is required because there is a vexatious litigant order against the prospective appellant. In such cases, “the primary factor in deciding whether to grant leave is whether the appeal has merit”: *Pearlman*

v. Critchley, 2012 BCCA 344 (Chambers), aff'd 2012 BCCA 398, leave to appeal to the SCC ref'd [2012] S.C.C.A. No. 527.

[21] The standard applied when scrutinizing a decision denying leave to a vexatious litigant is highly deferential. As Justice Groberman expressed in G*ichuru v. Purewal*, 2023 BCCA 345 at para. 3 [*Gichuru*]:

> A judge exercises discretion in determining whether to allow a vexatious litigant to file new proceedings and is fully entitled to consider the nature of the claim, its apparent merits, and the resources that will be expended in pursuing it. In the absence of a demonstrated legal error that might have had a material impact, this Court must show deference to the exercise of discretion. Only where the Court is convinced that precluding a vexatious litigant from pursuing a claim might result in real injustice should it interfere.

[22] Therefore, in each of his applications for leave to commence the respective appeals, Mr. Dick must demonstrate that there is some merit to the argument that the screening judge committed a legal error with a material impact when denying his request to commence a civil action.

Analysis

[23] Mr. Dick has not sufficiently addressed the *Davies* factors for an extension of time. The delay is not sufficiently explained.

[24] On the merits factor, Mr. Dick has not alleged any legal error by either screening judge in denying him leave to commence his proposed action.

[25] In dealing with his proposed action against Mr. Baker, Justice Riley found that the action was doomed to fail because of a lack of jurisdiction in two regards (the location of the real property and the financial cap provided by the *Small Claims Act*) and even if his application passed the low-threshold test, in the totality of the circumstances, it was not appropriate to grant leave to commence the action. Mr. Dick has not shown that the judge erred in this reasoning.

[26] In his proposed action against Vancouver City Savings Credit Union, Mr. Dick makes the same claims about the 1999 foreclosure that he has raised countless times in this Court and the BC Supreme Court. He claims that he was not in default

of the mortgage and that the foreclosure was therefore improper. This is an issue that has already been decided, and is precisely what MacNaughton J.'s reasons communicate. There is no requirement that judges provide extensive reasons on screening applications, as this would undermine the goal of vexatious litigant orders which seek to limit the judicial resources expended on meritless claims: *Gichuru* at para. 53.

Disposition

[27] Mr. Dick is out of time to file both applications, and both of his proposed appeals clearly lack merit. The applications to extend the time to file his applications for leave to appeal are dismissed.

"The Honourable Madam Justice Bennett"