

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Lew v. Bank of Montreal*,
2024 BCCA 409

Date: 20241119
Docket: CA49654

Between:

Karen Wai King Lew

Appellant
(Plaintiff)

And

Bank of Montreal and Fulton & Company LLP

Respondents
(Defendants)

Before: The Honourable Madam Justice Fenlon
(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated
January 12, 2024 (*Lew v. Bank of Montreal*, 2024 BCSC 59,
Vancouver Docket S230736).

Oral Reasons for Judgment

The Appellant, appearing in person:

K.W.K. Lew

Counsel for the Respondent,
Bank of Montreal:

B.J.L. Fahey
A. McDougall, Articled Student

Counsel for the Respondent,
Fulton & Company LLP:

N. Knezevic

Place and Date of Hearing:

Vancouver, British Columbia
November 19, 2024

Place and Date of Judgment:

Vancouver, British Columbia
November 19, 2024

Summary:

The respondents seek orders dismissing the appeal as abandoned and declaring the appellant to be a vexatious litigant. The underlying appeal of an order striking the appellant's notice of civil claim arises from a long history of litigation following the respondent bank obtaining an order of foreclosure on the appellant's home. Despite the court extending time to file the appellant's factum from May to October, it remains unfiled, and the appellant has not brought an application to extend time. The appellant says she has not filed her factum because she is busy pursuing other trials, is living in her car, and has had health issues. Held: Applications granted. As there is no evidence that the appellant has behaved vexatiously in relation to other matters, the requirement to obtain leave to commence proceedings is limited to matters arising from the foreclosure proceeding and sale of her home.

[1] **FENLON J.A.:** The applicants, the respondents on the appeal, are the Bank of Montreal (the "Bank") and Fulton & Company LLP ("Fulton"). Each applies for orders dismissing the appeal and declaring the appellant, Ms. Karen Lew, to be a vexatious litigant.

[2] The underlying appeal is from the order of Justice Gropper, pronounced on January 12, 2024, striking the appellant's notice of civil claim in its entirety: *Lew v. Bank of Montreal*, 2024 BCSC 59. In that notice of civil claim, Ms. Lew sought to set aside an order *nisi* of foreclosure and a conduct of sale order that the Bank had obtained against her in the foreclosure proceeding. Fulton was counsel for the Bank in that proceeding. Justice Gropper found the notice of civil claim to be an attempt to use the Court's process "dishonestly and unfairly for some ulterior and improper purpose": at para. 37.

[3] In both the notice of civil claim and foreclosure proceedings, Ms. Lew asserted fictional, pseudo-legal arguments that her debt had been extinguished by a 'debt jubilee.' She also claimed that Fulton and the Bank were guilty of "stalking, trespassing, harassing, extorting, scamming and trying to steal [her] home and kill [her]."

[4] On May 7, 2024, Justice DeWitt-Van Oosten of this Court ordered Ms. Lew to pay security for costs within 30 days, failing which the Bank and Fulton could apply to dismiss the appeal as abandoned.

[5] Ms. Lew did not pay security within 30 days of that order. The applicants applied on July 12, 2024 to dismiss the appeal as abandoned. In that hearing, Justice Griffin adjourned the application to dismiss the appeal and ordered Ms. Lew to direct the applicants to pay into Court, from the funds from the sale of the foreclosed property, \$10,000 as security against Fulton and \$15,000 as security against the Bank. Justice Griffin also stayed the appeal proceeding until September 6, 2024, after which the *Court of Appeal Rules* would continue to apply.

[6] The Bank and Fulton again applied to dismiss the appeal because Ms. Lew did not file her factum in accordance with the *Rules* and because at that point she had yet to file the security for costs. I note that she did file security for costs after the filing of this further application.

[7] The application is being heard some seven weeks after the extended time for the filing of the factum, which was due on October 6, 2024. No extension has been sought.

[8] There is a very lengthy history of appeals and applications concerning the foreclosure proceedings. The chronology, which I attach as Appendix “A” to these reasons, indicates that Ms. Lew has fought the foreclosure proceeding for over three years and has filed a half dozen appeals from orders and many applications. Currently, Ms. Lew is separately appealing an order approving the sale of the foreclosed property.

[9] The test that I have to apply on the application to dismiss the appeal (on the basis that it is abandoned as not having been prosecuted) is that set out in *Davies v. CIBC* (1987), 15 B.C.L.R. (2d) 256, 1987 CanLII 2608 (C.A.) [*Davies*]. Those factors are well known:

- a) Whether there was a *bona fide* intention to appeal;
- b) When the respondents were informed of the intention to appeal;

- c) Whether the respondents would be unduly prejudiced by an extension of time;
- d) Whether the appeal has merit; and
- e) Whether granting an extension is in the interests of justice.

The primary consideration is whether dismissing the appeal as abandoned is in the interests of justice: *Davies* at para. 22.

[10] As set out in *Houweling Nurseries Ltd. v. Houweling*, 2010 BCCA 315 at para. 44, and *Hokhold v. Gerbrandt*, 2017 BCCA 216 at para. 21, vexatious litigant orders are described as orders that should not be made lightly and should only be ordered in the clearest of cases, because such an order impedes, although it does not bar or prohibit, an individual's right to access the courts.

[11] In *Lindsay v. Canada (Attorney General)*, 2005 BCCA 594 at para. 25, Justice Donald, citing *Re Lang Michener and Fabian* (1987), 37 D.L.R. (4th) 685 at 691, 1987 CanLII 172 (O.N.S.C.), set out a list of non-exhaustive factors to be considered when assessing whether a vexatious litigant order is appropriate in relation to any given party:

- a) The bringing of one or more actions to determine an issue that has already been determined by a court of competent jurisdiction;
- b) It is obvious that an action cannot succeed, or the action would lead to no possible good, or no reasonable person could reasonably expect to obtain relief;
- c) Actions brought for an improper purpose, other than the assertion of legitimate rights, including the harassment and oppression of other parties by multifarious proceedings;

- d) Grounds and issues rolled forward into subsequent actions and repeated and supplemented, often with actions brought against the lawyers who have acted for or against the litigant in earlier proceedings;
- e) The whole history of the matter and not just whether there was originally a good cause of action;
- f) The failure of the person instituting the proceedings to pay the costs of unsuccessful proceedings; and
- g) Persistent taking of unsuccessful appeals from judicial decisions.

[12] Ms. Lew says in response to the application to dismiss her appeal that she has not filed her factum because she has been overwhelmed by all of her other matters proceeding in the Supreme Court. She says that she is one individual and that there are a number of lawyers acting for Fulton and the Bank who know how to use the system and are trying to obstruct her pursuit of justice, both in the Supreme Court and in this Court. She says she has been living in her car, which makes it difficult for her to prepare submissions and her factum. She says that she has had some health issues with her eye and that too has interfered with her ability to comply with the *Rules* that required her to file a factum by October 6, 2024. However, I note that Ms. Lew has been able to file responsive materials and, indeed, originating materials in the Court below, despite these challenges.

[13] Ms. Lew has already been given a lengthy extension and considerable accommodation due to these problems. In particular, Justice Griffin extended the filing deadline for the factum from May to October, yet here we are, seven weeks past that deadline of October 6, and still there is no factum filed and no application for an extension.

[14] In these circumstances, in my view, it is appropriate to dismiss the appeal for want of prosecution as abandoned and I do make that order.

[15] In terms of the application for a declaration that Ms. Lew is a vexatious litigant, I would not grant a general order declaring Ms. Lew to be a vexatious litigant in this Court for all matters. There is no evidence before me that Ms. Lew has repeatedly pursued matters other than the foreclosure proceeding and the order for sale. In my view, it is appropriate given the long history of the issues that were raised relating to the foreclosure proceeding, to make a limited order.

[16] I therefore declare Ms. Lew to be a vexatious litigant in relation to all matters concerning the foreclosure proceeding and the sale of her home at 2716 Waverley Avenue in Vancouver. She is prohibited from commencing any proceedings or filing any applications in this Court relating to those matters as against the Bank, Fulton, their lawyers, their employees and their agents without leave of this Court. I make that order.

[17] For Ms. Lew's benefit I explain that it does not mean that an application for permission to bring an application could not be made in this Court. But Ms. Lew cannot file anything without first applying for permission to do so in relation to anything at all related to the foreclosure proceeding, those particular parties, their lawyers, their employees or their agents.

[Discussion with counsel re: dispensing with the appellant's signature
as to form of order and costs]

[18] **FENLON J.A.:** I will dispense with the signature of Ms. Lew on the order but I would direct the Bank and Fulton to ensure a copy of the order is provided to her.

[19] Costs will follow the order, and both applicants are entitled to their costs at Scale B.

“The Honourable Madam Justice Fenlon”

APPENDIX "A"

DATE	DETAILS OF EVENT
April 2021	BMO initiated foreclosure proceedings against Ms. Lew in relation to the Property in Vancouver Registry Action No. H-210219 where Fulton were acting as counsel (the " Foreclosure Proceedings ").
September 2, 2021	Order <i>nisi</i> of foreclosure finding that Ms. Lew defaulted on the mortgage for the Property and granting personal judgment against her.
March 3, 2022	BMO applied for an order granting conduct of sale after the redemption period set by the order <i>nisi</i> expires. Ms. Lew first raised her <i>NESARA/GESARA</i> argument in her response to this application.
April 28, 2022	Conduct of sale of the property to BMO, effective on May 26, 2022 (the " Robertson Order for Conduct of Sale "). Ms. Lew appealed that order.
July 12, 2022	Justice Matthews dismissed the appeal of the Robertson Order for Conduct of Sale. In reasons indexed at 2022 BCSC 1320 (the " Matthews Order "). Ms. Lew raised her <i>NESARA/GESARA</i> argument on that appeal. Ms. Lew filed a notice of appeal in this Court from the Matthews Order.
October 20, 2022	Justice Horsman dismissed Ms. Lew's application for leave to appeal the Matthews Order and a stay of proceedings, in CA48421 (the " Horsman Order ").
January 6, 2023	Justice Frankel denied Ms. Lew's application for an extension of time to file and serve the application book for her application to vary the Horsman Order.
January 31, 2023	Ms. Lew filed a notice of civil claim, re-arguing the <i>NESARA/GESARA</i> theory and alleging that BMO as well as its solicitors in the foreclosure proceedings are stalking, trespassing, harassing, extorting, scamming, and trying to steal the Property and kill her.
February 15, 2023	Ms. Lew filed a notice of application in her civil action filed January 31, 2023, seeking a stay of proceedings of the Robertson Order for Conduct of Sale.

March 7, 2023	BMO applied for an <i>order absolute</i> of foreclosure. The application was adjourned generally and the bank has not pursued this application.
June 29, 2023	BMO applied for an order of vacant possession, which was adjourned until August 17, 2023.
August 17, 2023	On hearing BMO's application for vacant possession, Associate Judge Bilawich rejected Ms. Lew's <i>NESARA/GESARA</i> arguments and found it was clear from her submissions she had no intention of complying with the Robertson Order for Conduct of Sale. He ordered vacant possession by October 17, 2023 (the " Bilawich Order for Vacant Possession "). Ms. Lew appealed that order.
October 13, 2023	Justice Blake granted a stay of the Bilawich Order for Vacant Possession until January 7, 2024. This allowed time for the hearing of the appeal of the Bilawich Order for Vacant Possession.
November 6, 2023	Justice Wilkinson dismissed the appeal of the Bilawich Order for Vacant Possession in <i>Bank of Montreal v. Lew</i> , 2023 BCSC 1986 (the " Wilkinson Reasons "). Ms. Lew repeated her <i>NESARA/GESARA</i> arguments. Justice Wilkinson ordered that BMO was entitled to special costs.
January 8, 2024	Justice Crossin dismissed Ms. Lew's application for a stay of the Robertson Order for Conduct of Sale and the Bilawich Order for Vacant Possession. Justice Crossin granted a 30-day extension of Justice Blake's stay order to allow Ms. Lew to bring an application for a stay to this Court.
January 12, 2024	Justice Gropper struck Ms. Lew's January 2023 notice of civil claim in its entirety. The judge ordered that BMO was entitled to special costs: <i>Lew v. Bank of Montreal</i> , 2024 BCSC 59 at para. 37 [<i>Gropper Reasons</i>].
February 5, 2024	Justice Walker dismissed the stay applications for the Robertson Order for Conduct of Sale and the Bilawich Order for Vacant Possession (the " Walker Order "). Justice Walker also dismissed Ms. Lew's application to cancel the certificate of judgment registered against title to the Property.
February 12, 2024	Ms. Lew filed a Notice of Appeal in her claim against BMO and its solicitors.
February 20, 2024	Justice Griffin of the Court of Appeal dismissed Ms. Lew's application for a stay of the Walker Order.

March 13, 2024	As Ms. Lew refused to comply with and exhausted her appeal of the Bilawich Order for Vacant Possession, the bank obtained a writ of possession.
March 21, 2024	A bailiff enforced the writ of possession and delivered vacant possession of the Property to BMO.
April 19, 2024	Counsel for BMO entered into a new listing agreement on behalf of BMO to market the Property for sale at \$1,880,000 in accordance with the Robertson Order for Conduct of Sale.
May 7, 2024	Justice DeWitt-Van Oosten ordered Ms. Lew pay \$15,000 as security for costs of her appeal against BMO and \$10,000 as security for costs of her appeal against Fulton in the Subsequent Action.
June 3, 2024	BMO set down an application for hearing on June 20, 2024, for approval of sale for an accepted offer of \$1,726,000.
June 11, 2024	Ms. Lew filed an application response seeking an adjournment and objecting to the purchase price.
June 20, 2024	Ms. Lew failed to appear or have anyone appear on her behalf in chambers to request an adjournment. Associate Judge Muir also approved the sale of the Property for \$1,926,000 for completion on July 4, 2024 (" Muir Order Approving Sale ").
July 3, 2024	Mr. Lew served a Notice of Appeal of the Muir Order Approving Sale. Ms. Lew unilaterally scheduled this appeal in judge's chambers on August 30, 2024.
July 4, 2024	Justice Kent heard and dismissed Ms. Lew's application brought on short notice to stay the Muir Order Approving Sale.
July 12, 2024	Justice Griffin ordered that Ms. Lew shall provide a direction to counsel for the Respondents directing that \$10,000 and \$15,000 of the funds from the sale of the Property be paid into Court. Justice Griffin also ordered that these appeal proceedings be stayed until September 6, 2024, at which time all obligations under the <i>Court of Appeal Rules</i> recommence.
July 16, 2024	The registrar allowed \$14,943.64 and \$33,925.05 for the special costs of Fulton and BMO. Ms. Lew did not attend this hearing.

August 2, 2024	Ms. Lew unilaterally set down an application to compel BMO to pay surplus funds into court and for BMO to pay Ms. Lew \$200,000 in special costs.
August 8, 2024	BMO paid the surplus sale proceeds of \$1,191,043.36 into the BC Supreme Court.
August 16, 2024	Associate Judge Robertson dismissed Ms. Lew's application to compel BMO to pay funds into court as moot, dismissed Ms. Lew's application for \$200,000 in special costs, and awarded costs at Scale B to BMO to be paid from the funds held in court (the " Robertson Order ").
August 30, 2024	Ms. Lew's appeal of the Muir Order Approving Sale was adjourned generally due to the lengthy chambers list that day.
September 16, 2024	<p>Ms. Lew filed an application seeking the following relief:</p> <ol style="list-style-type: none"> (1) payment out of court of the surplus funds held in court to the credit of this proceeding; (2) cancellation of the certificate of judgment registered with the Land Title Office pursuant to the order for personal judgment of Associate Judge Cameron made September 2, 2021; (3) compel BMO to pay the \$1,500 holdback into court; and (4) special costs against BMO in the amount of \$200,000 for fraud. <p>Justice Weatherill ordered that \$1,130,917.29 be paid out of court to Ms. Lew from the proceeds of the sale of the Property. He further ordered that the remaining \$70,000 of proceeds will be held in court under an equitable charging order pending application by BMO and Fulton to have their special costs in the Subsequent Action (the "Weatherill Order").</p>
October 25, 2024	<p>The Special Costs Application was not heard due to the lengthy chambers list that day.</p> <p>Ms. Lew reset the appeal of the Muir Order Approving Sale for November 22, 2024 by requisition filed October 25, 2024.</p>