

CANADA / JUDGMENT

Almasri v. Saska

2021 BCCA 144

COURT

British Columbia Court of Appeal

DECIDED

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2021 BCCA 144 Almasri v. Saska COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Almasri v. Saska, 2021 BCCA 144 Date: 20210331 Docket: CA46657 Between: Badia Almasri Respondent (Claimant) And Laszlo Saska Appellant (Respondent) Before: The Honourable Madam Justice Fenlon The Honourable Mr. Justice Hunter The Honourable Madam Justice Griffin On an application to vary: An Order of the Court of Appeal for British Columbia, dated December 21, 2020 (Almasri v. Saska, Vancouver Docket CA46657). Oral Reasons for Judgment The Appellant, appearing in person (via videoconference): L. Saska No one appearing on behalf of the Respondent Place and Date of Hearing: Vancouver, British Columbia March 31, 2021 Place and Date of Judgment: Vancouver, British Columbia March 31, 2021 Summary: After an assessment of costs, the applicant's appeal to a Judge of the Supreme Court of British Columbia was dismissed. The applicant's application for leave to appeal was subsequently dismissed by a judge in chambers in this Court. The applicant now seeks an order varying the decision denying him leave to appeal. Held: application dismissed. The proper test was applied on the leave to appeal application. The chambers judge did not err in concluding that the proposed grounds of appeal are not arguable and it is not in the interests of justice to grant leave.

- [1] GRIFFIN J.A.: The applicant, Laszlo Saska, applies for an order varying Justice Grauer's decision denying him leave to appeal. Mr. Saska is seeking leave to appeal the order of Justice Punnett of the Supreme Court of British Columbia, which dismissed Mr. Saska's appeal from an assessment of costs by Master Bouck sitting as Registrar. Justice Punnett's reasons are indexed at 2019 BCSC 2245.

Background

Underlying Proceedings

- [2] This appeal arises in the context of a long and procedurally complex family law matter. The litigation has resulted in numerous costs proceedings.
- [3] In 2017, H. J. Holmes, J. (as she then was) made various orders in the proceeding, including an order for compensation to Ms. Almasri for a fraudulent conveyance between Mr. Saska and his mother, T.R. The reasons for that decision are indexed at 2017 BCSC 1796.

- [4] In January 2018, Holmes J. made a decision awarding costs against Mr. Saska, requiring him to pay Ms. Almasri 50% of the costs of the action assessed as special costs and 50% of the costs assessed as ordinary costs: 2018 BCSC 432. Subsequently, she became aware of a decision of this Court to the effect that special costs could only be awarded for reprehensible conduct during the litigation, and not for conduct before the litigation, and requested further submissions. After further submissions, she made a supplemental ruling on costs, essentially confirming her initial decision: 2018 BCSC 614.
- [5] Mr. Saska sought leave to appeal the costs order, which was denied. He brought an application for review of the decision denying him leave to appeal, and that was dismissed: 2018 BCCA 351. Mr. Saska sought leave to appeal to the Supreme Court of Canada, which was denied: [2019] S.C.C.A. No. 8.
- [6] The assessment of the costs ordered by Holmes J. occupied a three-day hearing in February 2019.
- [7] In March 2019, the Master issued her decision on costs: 2019 BCSC 339. The next day, Mr. Saska filed his notice of appeal to the Supreme Court of British Columbia. Ms. Almasri subsequently applied for and was granted security for costs of that appeal.
- [8] In June 2019, the Master ordered Mr. Saska to pay an additional \$13,000 for the costs of the three-day assessment hearing.
- [9] On December 10, 2019, Justice Punnett heard Mr. Saska's appeal from the Master's costs decisions. As mentioned, he dismissed the appeal in reasons delivered on December 24, 2019. Justice Grauer's Decision to Deny Leave to Appeal
- [10] Justice Punnett's order was a limited appeal order under Rule 2.1 of the Court of Appeal Rules, for which leave to appeal is required.
- [11] Mr. Saska applied for leave to appeal to this Court. Justice Grauer, sitting in chambers, heard the application on December 21, 2020.
- [12] The respondent did not participate in the leave application.
- [13] Mr. Saska's main submission was that the appeal was *prima facie* meritorious because Punnett J.'s reasons were insufficient. In support of this proposition, counsel pointed to the following paragraph of Punnett J.'s reasons:
- [9] Given the nature of the appellant's written submissions, resolution of the appeal does not require a detailed response to every allegation raised.
- [14] Justice Grauer noted that the above paragraph must be read in light of the judge's finding that Mr. Saska's arguments did not clearly articulate the issues on appeal and "include[d] 17 pages of detailed allegations, submissions, argument and commentary".
- [15] Mr. Saska also submitted that the judge failed to address three issues.

- [16] First, Mr. Saska submitted the judge failed to adequately deal with his argument that "using the word 'action' and not 'proceeding' suggests that costs are recoverable for fewer steps and that anything done after judgment is likewise not recoverable". This referred to the fact that the form of costs order made by Holmes J. referred to "costs of this action". This argument was rejected by Punnett J. who noted that costs are recoverable in British Columbia for all reasonable steps taken during the litigation, including post-judgment costs. Justice Grauer found Mr. Saska had not made an arguable case for this ground of appeal.
- [17] Second, Mr. Saska argued that the judge failed to consider whether pre-litigation conduct could be considered in awarding special costs. Justice Grauer found that there was no arguable ground of appeal made out because this related to the order made by Holmes J. As noted, Mr. Saska's application for leave to appeal that order was denied.
- [18] Finally, Mr. Saska submitted the judge failed to adequately discuss the difference between costs of legal staff and charges for non-lawyers. Justice Grauer noted that Punnett J. was entitled to look to the facts found by the Master and found that Mr. Saska had not established an arguable case that the findings constituted a palpable and overriding error.
- [19] Having determined the grounds of appeal Mr. Saska wished to pursue were not arguable, Grauer J.A. found it was not in the interests of justice to grant leave to appeal. Applicable Law
- [20] The standard of review on an application to discharge or vary an order of a justice in chambers is highly deferential. This Court confirmed the deferential standard of review in *Cowichan Valley (Regional District) v. Cobble Hill Holdings Ltd.*, 2016 BCCA 215:
- [23] The standard of review of an application to vary an order of a single justice is highly deferential. A review hearing is not a rehearing of the original application: *De Fehr v. De Fehr*, 2002 BCCA 139 at para. 6. It is not enough to allege the incorrect exercise of discretion. The Court will interfere only if there has been an "error in principle", the justice was "wrong in the legal sense", the justice misconceived the facts, or the relevant information was not brought to the justice's attention: *Haldorson v. Coquitlam (City)*, 2000 BCCA 672 at paras. 6-7; *Animal Welfare International Inc. v. W3 International Media Ltd.*, 2015 BCCA 148 at para. 9.
- [21] However, whether a proposed point on appeal is arguable is not a matter of discretion: *Richard v. British Columbia*, 2003 BCCA 589 at para. 23. Therefore, the decision of whether to grant leave to appeal due to lack of merit is reviewable on the standard of correctness: *MacLachlan v. Nadeau*, 2017 BCCA 326 at para. 27. Did Justice Grauer Err in Denying Leave to Appeal?
- [22] In my view, Grauer J.A. did not err in refusing to grant leave to appeal.
- [23] Justice Grauer correctly identified and applied the test for leave to appeal. His decision to deny leave to appeal was based principally on the merits of the proposed appeal and the interests of justice. Mr. Saska largely repeats the arguments he made before Grauer J.A. and additional arguments that he raised before Punnett J. I see no error in Grauer J.A.'s

conclusions on each of the grounds identified above that Mr. Saska had failed to make out an arguable case that warranted the attention of a division of this Court. It is unclear whether Mr. Saska raised other grounds of appeal before Grauer J.A., but in any event, I see no error in Punnett J.'s review of Mr. Saska's several other arguments and no merit to an appeal from the disposition of those other arguments.

- [24] Mr. Saska submits that Grauer J.A. erred in law in finding costs assessments to be discretionary. Mr. Saska submits the assessment of costs is a factual inquiry.
- [25] With respect, the assessment of costs involves discretion and can involve findings of fact. Leave to appeal will not be granted absent an error in principle or, with respect to any findings of fact that were made, absent a palpable and overriding error: see *Almasri v. Saska*, 2018 BCCA 351 at para. 13; see also *Moss, Jr. v. College of Opticians*, 2002 BCCA 602 at para. 9 (Chambers).
- [26] Mr. Saska submits that no judicial officer--not the Master and not the subsequent reviewing judges--provided a sufficiently careful review of the invoices of the lawyers. I note that the Master referred to there being no less than 230 documents filed in the costs hearing. She found that Mr. Saska raised a number of issues with respect to the bill of costs, and that his written submissions were repetitive, prolix and reflected a further attempt to re-argue matters already determined at trial or on appeal. Justice Punnett examined each of Mr. Saska's arguments and was not persuaded that the Master made a palpable and overriding error of fact, nor was Grauer J.A. persuaded that the reviewing judge was in error. Mr. Saska has not been persuasive in illustrating that Grauer J.A. made a palpable and overriding error in this regard.
- [27] In addition, Mr. Saska has raised an allegation of bias on the part of the Master. Mr. Saska has filed a new affidavit on this hearing, but nothing in his evidence supports his allegation. No reasonable, informed person would interpret the circumstances as giving rise to an apprehension of bias. This allegation was not raised before Grauer J.A.

Disposition

- [28] For these reasons, I would dismiss Mr. Saska's application.
- [29] FENLON J.A.: I agree.
- [30] HUNTER J.A.: I agree.
- [31] FENLON J.A.: The application to vary is dismissed. "The Honourable Madam Justice Griffin"

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