

CANADA / JUDGMENT

Arvanitis v. Slater Vecchio LLP

2021 BCCA 415

COURT

British Columbia Court of Appeal

DECIDED

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2021 BCCA 415 Arvanitis v. Slater Vecchio LLP

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Arvanitis v. Slater Vecchio LLP,

2021 BCCA 415

Date: 20211103

Docket: CA47677

Between:

Vicky Arvanitis

Appellant

(Defendant)

And

Slater Vecchio LLP

Respondent

(Plaintiff)

Before:

The Honourable Madam Justice DeWitt-Van Oosten

(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated July 14, 2021 (Slater Vecchio LLP v. Arvanitis, 2021 BCSC 1710, Vancouver Docket S195495).

The Appellant, appearing in person:

V. Arvanitis

Counsel for the Respondent:

D. Georgetti

Place and Date of Hearing:

Vancouver, British Columbia

October 21, 2021

Place and Date of Judgment:

Vancouver, British Columbia

November 3, 2021

Summary:

These reasons address two applications. The appellant seeks a "no-fee" order and an extension of time to file her appeal book and factum. The respondent applies for security for costs of the appeal and security for judgment. Held: The application for a no-fee order is denied on the ground that there is no prospect of success on the appeal. Security for costs of the appeal is granted in the amount of \$5,000. Security for judgment is also granted, in the amount of \$7,000. The appellant has 30 days to post the \$12,000. The appeal is stayed until the security is posted.

Reasons for Judgment of the Honourable Madam Justice DeWitt-Van Oosten:

Introduction

- [1] Vicky Arvanitis applies for a "no-fee" order to assist in appealing a July 14, 2021, order of Justice Gomery in the Supreme Court. The related reasons for judgment are indexed as 2021 BCSC 1710.
- [2] Ms. Arvanitis also seeks an extension of time to file her appeal book and factum. The notice of appeal was filed on August 9, 2021. The appeal record was filed on October 7. Without an extension, the appeal book and factum are due by November 7, 2021. Ms. Arvanitis is a person with disabilities and representing herself in the appeal. She finds it challenging to compile the requisite material and asks for additional time.
- [3] In response to the appeal, Slater Vecchio LLP seeks orders for security for costs of the appeal and security for judgment in the amounts of \$10,000 and \$7,000, respectively.
- [4] Both applications came before me on October 21, 2021.

Background

- [5] The July 2021 order of Justice Gomery enforced a settlement agreement reached in relation to court costs owed by Ms. Arvanitis.

- [6] The background to this matter was helpfully set out by Justice Dickson of this Court in a previous and related Chambers ruling, indexed as 2019 BCCA 481:
- [4] Ms. Arvanitis is a former client of Slater Vecchio, the law firm that represented her in a personal injury claim. Ms. Arvanitis was unhappy with the conduct of the file and sued the firm in negligence. Following a 12-day trial, Justice Sigurdson dismissed her claim and ordered her to pay costs of \$8,000. The trial reasons are indexed at 2016 BCSC 1612. The costs reasons are indexed at 2017 BCSC 155.
- [5] Ms. Arvanitis did not appeal Justice Sigurdson's decision. Instead, she commenced what Justice Sharma described [in 2019 BCSC 2369] as "a concerted and persistent campaign of stirring up ill feeling and malice, based on her anger toward the plaintiff". In doing so, Ms. Arvanitis posted extremely negative comments about the firm on various online review and social media platforms, including on personal accounts belonging to Slater Vecchio employees and the children of a partner at the firm. She also contacted current and former clients of the firm. For example, she wrote that the firm steals money from its disabled clients and engages in "disgusting unethical behaviour". Ms. Arvanitis did not deny posting comments to this effect.
- [6] Slater Vecchio brought a claim in defamation and sought an interlocutory injunction requiring Ms. Arvanitis to remove the postings and refrain from publishing further statements referring to the firm. Ms. Arvanitis filed a response and a counterclaim.
- [7] Slater Vecchio applied for an order striking the counterclaim pursuant to Rule 9-5 of the Supreme Court Civil Rules, an order that Ms. Arvanitis be declared a vexatious litigant, pursuant to s. 18 of the Supreme Court Act, R.S.B.C. 1996, c. 443, and an order requiring her to produce copies of all of her correspondence with clients of the firm and the media.
- [8] On June 20, 2019, in reasons indexed at 2019 BCSC 1156, Justice Duncan granted the interlocutory injunction. However, Slater Vecchio discovered additional content posted online by Ms. Arvanitis and learned that she had not removed the earlier content as ordered. Slater Vecchio accordingly brought an application for contempt of court.
- [9] On July 12, 2019, Justice Dillon issued a bench warrant for Ms. Arvanitis' arrest when she failed to attend the contempt hearing.
- [10] On July 22, 2019, Justice Groves found Ms. Arvanitis guilty of contempt of court. He ordered Ms. Arvanitis to make her best efforts to immediately remove the previously posted online content . Ms. Arvanitis has not appealed the order of Justice Groves.
- [11] Slater Vecchio applied to have Ms. Arvanitis' response to civil claim struck or, alternatively, for summary judgment. The applications were heard together by Justice Sharma on August 15, 2019. She gave oral reasons the same day, holding as follows:

- a) First, Justice Sharma granted Slater Vecchio's application to dismiss Ms. Arvanitis' counterclaim, finding it had no chance of success. The counterclaim sought damages for money taken out of trust to cover Ms. Arvanitis' legal fees -- a claim that had already been rejected by Justice Sigurdson and was therefore *res judicata*.
 - b) Second, Justice Sharma granted summary judgment for Slater Vecchio with regard to the defamation action. The only defence raised by Ms. Arvanitis was freedom of expression, under s. 2(b) of the Canadian Charter of Rights and Freedoms. However, as Justice Sharma noted, the Charter does not apply to private parties and does not preclude defamation claims.
 - c) Third, Justice Sharma ordered that the interim injunction issued by Justice Duncan continue permanently. This finding was based, among other things, on: the importance to Slater Vecchio of protecting its relationship with its former and current clients; the fact that Slater Vecchio exercised restraint in not taking legal action immediately against Ms. Arvanitis; the significant concerns raised by Ms. Arvanitis' contact with the children of one of the firm's partners; the fact that, in recognition of Ms. Arvanitis' indigent status, Slater Vecchio was not seeking damages and thus required injunctive relief to protect its reputation; and the concerted and persistent efforts of Ms. Arvanitis to damage the firm's reputation.
 - d) Fourth, Justice Sharma found Ms. Arvanitis to be a vexatious litigant and prohibited her from instituting proceedings against Slater Vecchio, its partners or employees without leave of the court and adjourned the application for an order prohibiting her from doing so against counsel for Slater Vecchio or his partners or employees.
 - e) Finally, Justice Sharma ordered that Ms. Arvanitis provide copies of all correspondence exchanged with former or current clients of the firm.
- [7] Ms. Arvanitis tried to appeal the orders issued by Justice Sharma (as well as other judges). However, she required an extension of time. Justice Dickson denied that request.
- [8] The settlement agreement that forms the basis of the latest appeal was entered into after Justice Dickson denied the extension. Among other things, the agreement required that Ms. Arvanitis pay Slater Vecchio \$7,000 in full and final settlement of all costs awards against her. At the material time, the fixed costs alone amounted to about \$17,000.
- [9] When before Justice Gomery, Ms. Arvanitis challenged the validity of the settlement agreement on several bases. Justice Gomery summarized her arguments at para. 5 of his reasons:
- [5] Ms. Arvanitis submits that the settlement is not valid and binding and should not be enforced, for the following reasons:
- a) it is misdated;

- b) it requires payment to be made by Ms. Arvanitis to Slater Vecchio on or before June 15, 2021, and payment was not in fact made by that date because Slater Vecchio refused her tender of payment;
 - c) a reference in paragraph 4 to the return of an amount of \$200 provided to Ms. Arvanitis for conduct money is mistaken, the amount was only \$100; and
 - d) the agreement requires Ms. Arvanitis to surrender her right to tax Slater Vecchio's fee account in the amount of \$10,080, and it is fundamentally unjust that Ms. Arvanitis should have to give that up.
- [10] Justice Gomery found these arguments to be without merit. He concluded there was "nothing inappropriate or unfair about a settlement of the nature established by this settlement agreement, and [he was] not at all persuaded that the agreement was entered into under duress or is otherwise invalid" (at para. 11). Indeed, the agreed-upon amount of \$7,000 is substantially less than the amount of legal costs owed by Ms. Arvanitis. Justice Gomery ruled that the "agreement remains in force and should be given effect" (at para. 12).
- [11] Prior to the hearing before Justice Gomery, Ms. Arvanitis attempted to pay the \$7,000. However, she wanted to pay in cash. For various reasons, Slater Vecchio was not prepared to accept that form of payment. As part of his order, Justice Gomery directed that the funds be paid into court to the credit of Slater Vecchio. He also ordered that each party bear their own costs for the hearing.

Nature of the Appeal

- [12] In her notice of appeal, Ms. Arvanitis seeks the following relief: "No contact for both parties, contract invalid, costs paid into court, bill review order. Order of contempt against Slater Vecchio LLP and an order for a judicial review for all order[s] on this file". She also says she will ask this Court for special damages.
- [13] Ms. Arvanitis has filed affidavits in support of her application for a no-fee order.
- [14] One of the affidavits speaks directly to her financial circumstances. She deposes that she is unemployed and permanently disabled. Her income is approximately \$1,400 per month. Her monthly expenses exceed her income. Her only asset is a vehicle valued at approximately \$2,000. She owes over \$1,000 on her credit card.
- [15] Before me, Ms. Arvanitis advised that within the last year or so she received \$33,000 in settlement of an accident claim. She says she kept approximately \$8,000 of that to pay her outstanding legal costs (presumably including the \$7,000 under the settlement agreement), and that the remainder of the funds was given to her parents in recognition of the financial support they have provided over the years.

- [16] In two other affidavits, sworn October 15, 2021, Ms. Arvanitis revisits the circumstances surrounding her dispute with Slater Vecchio and explains why the appeal is important to her. She says she agreed to the settlement while "under severe duress". Ms. Arvanitis alleges that Slater Vecchio's conduct towards her over the years has taken a significant physical, psychological and emotional toll. She says she signed the settlement agreement because she felt she had no choice. It was the only way to put an end to what she views as ongoing trauma engendered by the dispute. From her perspective, the appeal is necessary for her story to be heard and to hold Slater Vecchio to account. She says not being able to pursue the appeal because she cannot afford the mandated fees, or because of an order that she post security, would result in a grave injustice.

Legal Framework: No-Fee Order

- [17] A no-fee order is available where an applicant shows they cannot afford to pay mandatory appeal fees without undue hardship: Court of Appeal Rules, R. 56(1). Under R. 56(2), the order may be denied if the appeal lacks merit, is scandalous, frivolous or vexatious, or otherwise constitutes an abuse of the Court's process.
- [18] In *M.P.W. v. Victoria (City)*, 2020 BCCA 351, Justice Newbury set out the current legal framework governing these orders, specific to the assessment of merit:
- [11] in *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)* 2014 SCC 59, the Court stated that the purpose of Rules such as R. 56 is to "waive the fees for people who cannot, by reason of their financial situation, bring non-frivolous or non-vexatious litigation to court." (At para. 48.) Nevertheless, subparagraph (a) of R. 56(2) remains in place, suggesting that if the appeal "lacks merit" but is not frivolous or vexatious, the test may still be met. Subsequent decisions have formulated the test as "bound to fail" or as having "no prospect of success": see *Walker v. Manufacturers Life Insurance Company*, 2015 BCCA 143; *M.K. v. British Columbia (Attorney General)*, 2019 BCCA 161; *N.E.T. v. British Columbia*, 2018 BCCA 22.

Legal Framework: Security for Costs and Security for Judgment

- [19] Section 24(1) of the Court of Appeal Act, R.S.B.C. 1996, c. 77, authorizes an order for security for costs of the appeal. The party that initiates the appeal bears the onus of showing that an order for security is not warranted: *Creative Salmon Company Ltd. v. Staniford*, 2007 BCCA 285 at para. 9 (Chambers).
- [20] The primary question to answer is whether an order for security is in the interests of justice: *Lu v. Mao*, 2006 BCCA 560 at para. 6 (Chambers). Relevant factors for consideration are summarized in *Gardezi v. Positive Living Society of British Columbia*, 2018 BCCA 84 (Chambers):

- [29] This Court generally considers five factors in determining whether to make an order for security for costs of the appeal. The first factor is the appellant's financial means. If ordering security for costs would prevent the appellant from pursuing a meritorious appeal, it may not be in the interests of justice to make the order: *Zen v. M.R.S. Trust Company* (1997), 88 B.C.A.C. 198 (Chambers). However, the Court may require the appellant to post security for costs of the appeal even if obtaining the funds would be difficult: *D. Bacon Holdings Ltd. v. Naramata Vines Inc.*, 2010 BCCA 427 at para. 21 (Chambers).
- [30] The second factor is whether the costs of the appeal will be readily recoverable if the respondent succeeds. If the applicant shows there is a serious question that recovery may be difficult, a presumption in favour of granting security for costs arises, unless the appellant can demonstrate the appeal has obvious merit: *Edwards v. Moran*, 2003 BCCA 443 at para. 14 (Chambers); *Sangha v. Azevedo*, 2005 BCCA 125 at para. 6 (Chambers).
- [31] The third factor is the timing of the application for security. Because the appeal is usually stayed until security is posted, injustice would result if the respondent applied for security for costs on the eve of the appeal: *M.(M.) v. F.(R.)* (1997), 43 B.C.L.R. (3d) 98 at 101 (C.A. in Chambers).
- [32] The fourth factor is the merits of the appeal. If the appeal is "virtually hopeless" or "bound to fail", security for costs may be ordered even if the order prevents the appellant from pursuing the appeal: *Jenkins v. Swallow Frames & Cycles Ltd.* (1997), 97 B.C.A.C. 81 at paras. 5, 7 (Chambers); *Freshway Specialty Foods Inc. v. Map Produce LLC*, 2006 BCCA 592 at para. 14 (Chambers). On the other hand, the Court will not order security for costs if it would prevent the appellant from pursuing a meritorious appeal: *Creative Salmon Company Ltd.* at para. 12.
- [33] The fifth and ultimate factor is whether the order for security for costs would be in the interests of justice: *Lu v. Mao*, 2006 BCCA 560 at para. 6 (Chambers).
- [21] The jurisdiction to grant security for trial costs or for a trial judgment is found in s. 10(2)(b) of the Court of Appeal Act:
- 10 (2) In an appeal or other matter before the court, a justice may do one or more of the following:
- (b) make an interim order to prevent prejudice to any person.
- [22] This form of relief is ordered less readily than security for costs of an appeal: *Siekham v. Hiebert*, 2008 BCCA 299 at para. 13. As explained at para. 11 of *Creative Salmon*, the applicant bears the onus and must show that the requested order is in the interests of justice. The applicant must show prejudice if the order is not made. In assessing the interests of justice, a court must consider the merits of the appeal and the effect of an order on the ability of the appellant to proceed with the appeal.

Discussion

- [23] I accept that Ms. Arvanitis meets the first part of the test for a no-fee order, namely, that she cannot afford to pay mandated fees without undue hardship. Appropriately, counsel for Slater Vecchio did not make a submission to the contrary.
- [24] However, after reviewing Ms. Arvanitis' affidavits and the reasons of Justice Gomery, I have concluded that the order should be denied on the ground that the appeal has no prospect of success.
- [25] In her affidavits, and before me at the hearing, Ms. Arvanitis highlighted various parts of the chronology of her dispute with Slater Vecchio that she considers particularly egregious and she explained the impact of those events on her. She spoke of the resultant hardship, the importance to her of the courts holding Slater Vecchio to account, and the fact that she feels unheard by the justice system.
- [26] I appreciate that Ms. Arvanitis feels very strongly about these issues. That was readily apparent from her oral submissions. It was distressing for her to put her position forward and it is obvious that the situation is upsetting to her.
- [27] However, the bulk of the matters raised by Ms. Arvanitis in support of her application have been litigated and resolved against her on the merits. The appeal before this Court is limited to Justice Gomery's order upholding the enforceability of the settlement agreement. Specific to that order, Ms. Arvanitis has not identified any legal error or palpable and overriding error of fact.
- [28] It is apparent from Justice Gomery's reasons that he was alive to the issues raised by Ms. Arvanitis in challenging the validity of the settlement agreement. He addressed each of them. There is nothing on the face of his reasons that suggests he misdirected himself on the governing legal principles or that he misapprehended the record in concluding that the agreement was neither inappropriate nor unfair.
- [29] I also note that Ms. Arvanitis was represented by a lawyer when the settlement agreement was entered into. Moreover, she was the one who made the offer that led to a settlement. The agreement was substantially consistent with the offer and it was signed by both parties.
- [30] In the circumstances, I see no realistic possibility of Ms. Arvanitis persuading a division of this Court that Justice Gomery was wrong to reject her submission on the invalidity of the agreement.
- [31] Consequently, I decline to grant a no-fee order. I recognize that doing so may present a substantial hurdle to Ms. Arvanitis in pursuing the appeal. However, I see no principled basis for granting the order in light of the governing legal test.

- [32] Given my conclusion on the merits of the appeal, I am also satisfied that Slater Vecchio is entitled to an order for security for costs of the appeal. As noted, Ms. Arvanitis bears the onus of showing that an order for security is not warranted. She has not done so.
- [33] Ms. Arvanitis is of limited financial means. If Slater Vecchio succeeds on the appeal, obtaining its costs of defending the settlement agreement will be difficult. Those costs are likely not recoverable. Ms. Arvanitis already owes Slater Vecchio \$7,000 under the settlement agreement. Any costs flowing from a dismissal of the appeal would be in addition to that.
- [34] Slater Vecchio brought its application for security for costs in a timely way. Its motion was filed a month after the notice of appeal. The appeal is still in its early stages.
- [35] I have determined there is no prospect of success in the appeal. In light of the history of these proceedings, including judicial findings of obstreperous conduct by Ms. Arvanitis (she has been declared a vexatious litigant in the Supreme Court and thrice found in civil contempt), the interests of justice weigh in favour of an order for security, notwithstanding the fact that it may mean Ms. Arvanitis cannot proceed.
- [36] Slater Vecchio did not include a draft bill of costs in support of its estimated \$10,000 in appeal costs. Although a draft bill is not required under the Rules, they are sometimes provided in this type of an application and they prove helpful to the Court in assessing the reasonableness of the proposed order. See, for example, *Hudema v. Moore*, 2021 BCCA 276 at para. 18 (Chambers). Given the narrow scope of the issues that properly arise in the appeal, the short judgment, and the length of the proceeding before Justice Gomery, I consider security for costs of the appeal in the amount of \$5,000 to be appropriate.
- [37] Finally, Slater Vecchio also seeks an order for security for judgment.
- [38] For the same reasons I have ordered security for costs of the appeal, I am of the view that security for judgment in the amount of \$7,000 is appropriate.
- [39] I recognize that this will create yet another impediment to Ms. Arvanitis carrying on with the appeal. However, she has not paid the money owing under the settlement agreement, even though Justice Gomery created a way for her to pay using her preferred method. It is clear from the record that she had the \$7,000 available to her in June 2021, one month before Justice Gomery's order. While before me, she continued to argue that the settlement agreement is invalid. She has not applied to stay the order enforcing the agreement. I appreciate that from her perspective, she has good reason to not pay the \$7,000. Nonetheless, the money is owed to Slater Vecchio and her attempts to set the settlement agreement aside in the Supreme Court were unsuccessful.

[40] We are now three months past the date of Justice Gomery's ruling. On the record before me and in light of the history of these proceedings, Slater Vecchio has persuaded me that in the absence of security for judgment, further delay occasioned by Ms. Arvanitis' appeal will likely prejudice its ability to collect the \$7,000.

Disposition

[41] Ms. Arvanitis' application for a no-fee order is dismissed.

[42] I order that Ms. Arvanitis post security for costs of the appeal and security for judgment in the cumulative amount of \$12,000. The appeal is stayed until the security is posted. Ms. Arvanitis has 30 days from the date of these reasons to post the security. If it is not posted by the deadline, Slater Vecchio is free to apply to have the appeal dismissed as abandoned.

[43] Should Ms. Arvanitis post \$12,000 by the deadline, I order that her appeal book and factum be filed by no later than December 17, 2021. Ms. Arvanitis has shown a bona fide intention to appeal. Slater Vecchio was informed of that intention. I see no prospect of success in the appeal, but that issue has been addressed by the orders for posting security. Assuming the security is in place, I cannot see that Slater Vecchio would be prejudiced by an extension of time to file and, on balance, it would be in the interests of justice that Ms. Arvanitis be allowed to move forward. She does not seek a lengthy period to complete her appeal book and factum. (Davies v. C.I.B.C. (1987), 15 B.C.L.R. (2d) 256 at 259-60, 1987 CanLII 2608 (C.A.).)

[44] Finally, I direct that Slater Vecchio prepare an order for entry reflecting the result of both applications, and I dispense with the need for Ms. Arvanitis' signature on that order.

"The Honourable Madam Justice DeWitt-Van Oosten"

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