

CANADA / JUDGMENT

Arvanitis v. Slater Vecchio LLP

2022 BCCA 326

COURT

British Columbia Court of Appeal

DECIDED

26 September 2022

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2022 BCCA 326 Arvanitis v. Slater Vecchio LLP

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Arvanitis v. Slater Vecchio LLP,

2022 BCCA 326

Date: 20220926

Dockets: CA46372; CA46373; CA46375

CA47677; CA48269; CA48270

Between:

Vicky Arvanitis

Appellant

(Defendant)

And

Slater Vecchio LLP

Respondent

(Plaintiff)

Before:

The Honourable Madam Justice Fenlon

The Honourable Mr. Justice Abrioux

The Honourable Madam Justice Horsman

On an application to vary: Orders of the Court of Appeal for British Columbia, dated November 3, 2021, June 30, 2022 August 12, 2022 (Arvanitis v. Slater Vecchio LLP, 2021 BCCA 415, 2022 BCCA 253, 2022 BCCA 290, Vancouver Dockets CA46372, CA46373, CA46375, CA47677, CA48269, CA48270), and January 31, 2022 (Arvanitis v. Slater Vecchio LLP, Vancouver Docket CA47677).

The Appellant, appearing in person:

V. Arvanitis

Counsel for the Respondent:

D.K. Georgetti

Place and Date of Hearing:

Vancouver, British Columbia

September 6, 2022

Place and Date of Judgment:

Vancouver, British Columbia

September 26, 2022

Written Reasons by:

The Honourable Madam Justice Horsman

Concurred in by:

The Honourable Madam Justice Fenlon

The Honourable Mr. Justice Abrioux

Summary:

The appellant has filed three applications to vary or cancel four orders made by justices of this Court that either refused an extension of time or required the appellant to post security for costs. The respondent applied for an order prohibiting the appellant from bringing or continuing an appeal or application for leave to appeal without leave of the Court or a justice on the ground that she is a vexatious litigant.

Held: The appellant's applications to vary or cancel are dismissed. The appellant failed to establish any error in the orders under review. The respondent's application to find the appellant a vexatious litigant is also dismissed. The extraordinary remedy of a vexatious litigant order is not justified at this stage of the proceedings.

Reasons for Judgment of the Honourable Madam Justice Horsman:

Overview

- [1] The appellant, Vicky Arvanitis, has initiated six appeal proceedings in this Court arising out of protracted litigation between her and the respondent Slater Vecchio LLP ("Slater Vecchio"). The present hearing concerns four applications:
- (1) Court of Appeal File Nos. CA48269 and CA48270: Ms. Arvanitis applies to vary or cancel the June 30, 2022 order of Justice Griffin dismissing Ms. Arvanitis' application to extend the time to appeal two orders of the Supreme Court of British Columbia;
 - (2) Court of Appeal File No. CA47677: Ms. Arvanitis seeks an extension of time to apply to vary or cancel the November 3, 2021 order of Justice DeWitt-Van Oosten requiring Ms. Arvanitis to post security for costs, and the January 31, 2022 order of Justice Marchand dismissing her appeal as abandoned;
 - (3) Court of Appeal File Nos. CA46372, CA46373 and CA46375: Ms. Arvanitis applies to vary or cancel the August 12, 2022 order of Justice Grauer, dismissing her application for an extension of time to apply to vary the October 29, 2019 order of Justice Dickson; and
 - (4) Slater Vecchio applies for orders pursuant to s. 22 of the Court of Appeal Act, S.B.C. 2021, c. 6 [Court of Appeal Act], dismissing Ms. Arvanitis' outstanding applications and prohibiting Ms. Arvanitis from bringing or continuing an appeal or application for leave to appeal in the court without leave of the court or a justice (the "Vexatious Litigant Application").
- [2] The present hearing date was originally set to address only the first of these applications, Ms. Arvanitis' application to vary or cancel the June 30, 2022 order of Justice Griffin. In his judgment of August 12, 2022, Justice Grauer granted Slater Vecchio leave to amend and re-set its Vexatious Litigant Application--which was first filed in 2019--for hearing on September 6, 2022, at the same time as the application to vary or discharge Justice Griffin's order. Justice Grauer further ordered that it was for the division hearing those applications to determine whether Slater Vecchio's application to dismiss Ms. Arvanitis' application to vary or cancel the orders of Justices DeWitt-Van Oosten and Marchand should also be heard on September 6, 2022. That review application is otherwise scheduled to be heard on October 31, 2022. Ms. Arvanitis subsequently filed an application to vary or cancel the order of Justice Grauer. This application was also set for hearing on September 6, 2022.
- [3] In its Vexatious Litigant Application, Slater Vecchio seeks a finding that Ms. Arvanitis is a vexatious litigant, as well as orders pursuant to s. 22(3) of the Court of Appeal Act dismissing Ms. Arvanitis' outstanding applications to vary or cancel the orders of Justices Griffin, DeWitt-Van Oosten, Marchand, and Grauer. Due to the interrelated nature of the issues, Slater Vecchio argues that all four applications should be addressed at the same time. Slater Vecchio says that Ms. Arvanitis has habitually, persistently and without reasonable cause commenced or continued vexatious proceedings in the courts of British Columbia. Slater

Vecchio says there is no merit to any of the outstanding applications, and that Ms. Arvanitis' pattern of litigation conduct constitutes an abuse of the court process.

- [4] At the outset of the hearing, Ms. Arvanitis stated her opposition to the four applications being heard at the same time. She expressed concern about her ability to meaningfully address all of the applications. She instead proposed that only her application to vary or cancel the order of Justice Griffin should be heard, with the remaining applications adjourned to a later date. After receiving submissions from both parties on this procedural point, the Court ruled that the parties should address all four applications at the hearing, but reserved to final judgment the decision on the adjournment application.
- [5] The applications are interrelated, and it is in the interests of efficiency, consistency, and judicial economy that they be addressed at the same time. In my view, the appeal hearing provided Ms. Arvanitis a full opportunity to address each of the applications. I conclude that the evidentiary record and submissions before the Court permit the fair resolution of all four applications. For the reasons that follow, I would dismiss Ms. Arvanitis' applications to vary or cancel the orders of Justices Griffin, DeWitt-Van Oosten, Marchand, and Grauer. I would also dismiss Slater Vecchio's Vexatious Litigant Application.

Background

- [6] The four applications before the Court arise out of a common litigation history. This history is reviewed in detail in the judgments of Justice Grauer (indexed at 2022 BCCA 290), Justice Griffin (indexed at 2022 BCCA 253), Justice DeWitt-Van Oosten (indexed at 2021 BCCA 415), and Justice Dickson (indexed at 2019 BCCA 481). For the purpose of the present applications, the following summary is sufficient.
- [7] Slater Vecchio represented Ms. Arvanitis in a personal injury claim. Ms. Arvanitis is dissatisfied with Slater Vecchio's representation of her. This dissatisfaction has led to prolonged litigation between the parties. Ms. Arvanitis sued Slater Vecchio for negligence. This action was dismissed (reasons indexed at 2016 BCSC 1612). Slater Vecchio was awarded costs in the lump sum amount of \$8,000 (reasons indexed at 2017 BCSC 155). Ms. Arvanitis did not appeal these judgments. Instead, she began to post negative comments about Slater Vecchio on various online review and social media platforms, including the personal accounts of Slater Vecchio employees and the accounts of children of a partner of the firm. In May 2019, Slater Vecchio filed a defamation action against Ms. Arvanitis. Ms. Arvanitis filed a response and counterclaim.
- [8] The proceedings in this Court arise from orders made by the Supreme Court of British Columbia in the defamation action and in a proceeding brought by Slater Vecchio to enforce a costs settlement. The relevant chronology is as follows:

- a) On June 20, 2019, Justice Duncan granted Slater Vecchio's application in the defamation action for an interim injunction prohibiting Ms. Arvanitis from posting online negative commentary about the firm pending trial;
- b) On July 12, 2019, Justice Dillon issued a bench warrant for Ms. Arvanitis' arrest after she failed to attend a contempt hearing relating to her non-compliance with Justice Duncan's order;
- c) On July 22, 2019, Justice Groves found Ms. Arvanitis guilty of contempt, and ordered her to make best efforts to remove previously-posted online content;
- d) On August 15, 2019, Justice Sharma granted Slater Vecchio's application in the defamation action for an order that the interim injunction issued by Justice Duncan continue as a permanent injunction, as well as an order dismissing Ms. Arvanitis' counterclaim pursuant to Rule 9-5 of the Supreme Court Civil Rules, an order for summary judgment pursuant to Rule 9-6, and 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;
- e) On November 21, 2019, Justice Sharma expanded the vexatious litigant order to prohibit Ms. Arvanitis from starting any proceedings against Slater Vecchio's counsel, Mr. Georgetti, or the partners or employees of his law firm, without leave of the court;
- f) On September 17 and 18, 2019, Ms. Arvanitis filed notices of appeal in relation to the interim injunction order of Justice Duncan, the bench warrant issued by Justice Dillon and the August 15, 2019 order of Justice Sharma, and she applied for an extension of time to appeal these orders;
- g) On October 29, 2019 (in reasons indexed at 2019 BCCA 481), Justice Dickson dismissed Ms. Arvanitis' application for an extension of time to appeal the three orders because, in her view, all three of the proposed appeals were bound to fail;
- h) On February 22, 2021 (in reasons indexed at 2021 BCSC 428), Justice Giaschi found Ms. Arvanitis guilty of contempt of court for having continued to post negative online commentary about Slater Vecchio in contravention of the permanent injunction order issued by Justice Sharma;
- i) On May 27, 2021, Ms. Arvanitis offered to pay Slater Vecchio \$7,000 in full and final settlement of all costs awards made against her and an agreement consistent with this offer was subsequently drawn up and signed by both parties;
- j) On July 14, 2021 (in reasons indexed at 2021 BCSC 1710), Justice Gomery granted Slater Vecchio's application for a declaration that the costs settlement was valid, binding, and subsisting between the parties;

- k) On August 9, 2021, Ms. Arvanitis filed a notice of appeal of Justice Gomery's decision, and also applied for an order relieving her of the obligation to pay filing fees on the appeal (a "no fee" order);
- l) On September 10, 2021, Slater Vecchio filed a cross-application seeking security for costs;
- m) On November 3, 2021 (in reasons indexed at 2021 BCCA 415), Justice DeWitt-Van Oosten: (1) dismissed Ms. Arvanitis' application for a no fee order, and (2) ordered Ms. Arvanitis to pay security for costs in the amount of \$12,000 within 30 days, failing which her appeal would be dismissed as abandoned;
- n) On December 20, 2021, Slater Vecchio applied to have Ms. Arvanitis' appeal of Justice Gomery's order dismissed as abandoned, as she had not posted security for costs within 30 days of Justice DeWitt-Van Oosten's order;
- o) On January 31, 2022, Justice Marchand dismissed Ms. Arvanitis' appeal of Justice Gomery's order as abandoned;
- p) On April 27, 2022, Ms. Arvanitis filed an application for an extension of time to vary or cancel the orders of Justices DeWitt-Van Oosten and Marchand;
- q) On May 4, 2022, Ms. Arvanitis filed an application for an extension of time to appeal the August 15, 2019 and November 21, 2019 orders of Justice Sharma, the former of which had already been the subject of the extension application heard by Justice Dickson in 2019;
- r) On June 30, 2022 (in reasons indexed at 2022 BCCA 253), Justice Griffin: (1) quashed Ms. Arvanitis' second attempt to appeal Justice Sharma's August 15, 2019 order as a nullity, and (2) dismissed Ms. Arvanitis' application for an extension of time to appeal Justice Sharma's November 19, 2019 order;
- s) On July 5, 2022, Ms. Arvanitis filed an application for an extension of time to vary or cancel Justice Griffin's order;
- t) On July 8, 2022, Ms. Arvanitis filed an application for an extension of time to vary or cancel Justice Dickson's October 29, 2019 order, specifically in relation to Justice Dickson's refusal of an extension of time to appeal Justice Sharma's August 15, 2019 order;
- u) On August 12, 2022 (in reasons indexed at 2022 BCCA 290), Justice Grauer dismissed this application;
- v) On August 17, 2022, Ms. Arvanitis filed an application to vary or cancel Justice Grauer's order.
- [9] In summary, Ms. Arvanitis has initiated six proceedings in this Court arising out of her dispute with Slater Vecchio. Justices of this Court have consistently either refused to grant Ms. Arvanitis extensions of time to appeal or have ordered her to pay security for costs. All of Ms. Arvanitis' appeals currently stand as dismissed.

- [10] There have been further recent proceedings in the Supreme Court. Ms. Arvanitis did not pay Slater Vecchio the amounts required by the costs settlement, and the firm initiated enforcement proceedings. On March 25, 2022 Master Bilawach ordered Ms. Arvanitis to produce documents in advance of an examination in aid of execution. Ms. Arvanitis appealed the production order and, in the meantime, failed to comply with the order. She did not attend the scheduled examination in aid of execution. Ms. Arvanitis took the position that she need not comply with the enforcement process while her proposed appeal of Justice Gomery's order was outstanding. These events are reviewed in greater detail in the recent judgment of Justice Blok striking Ms. Arvanitis' appeal of Master Bilawach's order: *Slater Vecchio LLP v. Arvanitis*, 2022 BCSC 1139.
- [11] In addition, in March 2022 Slater Vecchio filed a second contempt application against Ms. Arvanitis in relation to her continued online posts about the firm. On June 14, 2022 (in reasons indexed at 2022 BCSC 1197), Justice Brongers found that Ms. Arvanitis had breached the terms of the Court's injunction, but he exercised his discretion to decline to make a contempt finding.

Issues

- [12] The applications before the Court raise the following issues:
- Did any of Justices DeWitt-Van Oosten, Marchand, Griffin or Grauer err in their orders?
 - Should an order be made pursuant to s. 22 of the Court of Appeal Act preventing Ms. Arvanitis from initiating further proceedings in this Court without leave of the Court or a justice?

Analysis

Issue a): Did any of the justices err?

- [13] In her three applications, Ms. Arvanitis seeks to vary or cancel four orders of justices of this Court, sitting in chambers, pursuant to s. 29 of the Court of Appeal Act, formerly s. 9(6) of the Court of Appeal Act, R.S.B.C. 1996, c. 77 [Former Court of Appeal Act]. Such an application must ordinarily be brought no more than seven days after the order sought to be reviewed was made: *Court of Appeal Rules*, B.C. Reg 120/2022, Rule 62(2) [formerly Rule 34 of the Court of Appeal Rules, B.C. Reg. 297/2001].
- [14] The standard of review on an application for an order varying or cancelling an order of a justice is "highly deferential". A review is not a re-hearing. For a review division to interfere with the order of a justice, the appellant must demonstrate that the chambers justice was wrong in law, wrong in principle, or misconceived the facts. If such errors are not demonstrated, the application must be dismissed: *Seattle Environmental Consulting Ltd. v. Workers' Compensation Board of British Columbia*, 2017 BCCA 386 at paras. 5-7.

- [15] I will address the alleged errors Ms. Arvanitis identifies in respect of each of the orders under review.

Order of Justice DeWitt-Van Oosten: 2021 BCCA 415

- [16] Justice DeWitt-Van Oosten's order dismissed Ms. Arvanitis' application for a no fee order on the appeal from Justice Gomery, and granted Slater Vecchio's application for an order for security for costs and judgment in the amount of \$12,000, comprised of the \$7,000 Ms. Arvanitis owed Slater Vecchio under the costs settlement and \$5,000 for the costs of the appeal. She further ordered that Ms. Arvanitis had 30 days to post the security, failing which Slater Vecchio was free to apply to have the appeal dismissed as abandoned: at para. 42.
- [17] Ms. Arvanitis says that Justice DeWitt-Van Oosten erred by overlooking the principle that a party should not be prevented from pursuing a meritorious appeal due to a lack of financial resources. In my view, Ms. Arvanitis' position overlooks the test for a no fee order, which was correctly set out by Justice DeWitt-Van Oosten.
- [18] Justice DeWitt-Van Oosten reviewed the two steps to the test for a no fee order: (1) the applicant cannot afford to pay mandated fees without undue hardship, and (2) the proposed appeal is not bound to fail. Justice DeWitt-Van Oosten noted that even where financial hardship is established by the applicant, a no fee order may be refused if the appeal lacks merit, is scandalous, frivolous or vexatious, or otherwise constitutes an abuse of court process: at paras. 17-22.
- [19] Justice DeWitt-Van Oosten accepted that Ms. Arvanitis met the first part of the test, but found there was no merit to the appeal. She stated:
- [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.
- [20] Justice DeWitt-Van Oosten identified the primary question on a security for costs application as whether such an order is in the interests of justice. She acknowledged that such an order could prevent Ms. Arvanitis from pursuing the appeal, but was persuaded that, in light of the history of the proceedings, the interests of justice weighed in favour of an order for security for appeal costs as well as security for judgment: at paras. 35-40.
- [21] Accordingly, this is not a case in which a no fee order impedes a meritorious appeal, but rather a case in which a no fee order was refused on the basis that the appeal is lacking in merit. While Ms. Arvanitis disagrees with Justice DeWitt-Van Oosten's assessment of the merits of her appeal, she does not identify any error of law or principle or misconception of facts in her analysis.
- [22] For these reasons, I would dismiss Ms. Arvanitis' application to vary or cancel the order of Justice DeWitt-Van Oosten.

Order of Justice Marchand

- [23] Justice Marchand did not issue reasons for decision in relation to his January 31, 2022 order. Reasons were, in the circumstances, unnecessary. Ms. Arvanitis did not post security within 30 days of Justice DeWitt-Van Oosten's order, and therefore Slater Vecchio was free to apply to dismiss the appeal as abandoned. Justice Marchand granted the application.
- [24] Ms. Arvanitis says that Justice Marchand erred in allowing Slater Vecchio's application to dismiss the appeal due to her failure to post security, rather than adjourning the application so that she could seek a review of Justice DeWitt-Van Oosten's order. However, Justice Marchand's order was simply a consequence of Ms. Arvanitis' failure to post security within the time required by the order of Justice DeWitt-Van Oosten. Ms. Arvanitis did not apply either for a stay of the order or for an extension of time to post the security. I cannot see how Justice Marchand could be said to have erred in failing to grant a remedy to Ms. Arvanitis that she did not seek.
- [25] For these reasons, I would dismiss Ms. Arvanitis' application to vary or cancel the order of Justice Marchand.

Order of Justice Griffin: 2022 BCCA 253

- [26] Justice Griffin's order quashed Ms. Arvanitis' application for an extension of time to appeal the August 15, 2019 order as a nullity. It was a nullity because Ms. Arvanitis had previously filed an appeal of that same order, which was dismissed on October 29, 2019 by Justice Dickson. Justice Griffin also dismissed Ms. Arvanitis' application for an extension of time to appeal the November 21, 2019 order of Justice Sharma. In declining to grant an extension of

time, Justice Griffin applied the well-known criteria from this Court's decision in *Davies v. C.I.B.C.* (1987), 15 B.C.L.R. (2d) 256 (C.A.), which govern an application for an extension of time to bring an appeal.

- [27] Ms. Arvanitis alleges that Justice Griffin made three errors.
- [28] First, she says Justice Griffin erred in quashing Ms. Arvanitis' appeal of the August 15, 2019 vexatious litigant order of Justice Sharma because Justice Dickson, in turn, erred in interpreting Ms. Arvanitis' September 17, 2019 notice of appeal to include an appeal of the vexatious litigant order. Ms. Arvanitis says that her September 17, 2019 notice of appeal of the August 15, 2019 order only related to Justice Sharma's dismissal of her counterclaim, and that she intended to file a separate notice of appeal to address the vexatious litigant order. She says that Justice Dickson's judgment thus reflects an error.
- [29] Ms. Arvanitis' submission implies that it is open to an appellant to file multiple separate (and late) appeals arising out of a single judgment. I need not address this proposition because the fact is that Ms. Arvanitis' September 17, 2019 notice of appeal was not, on its face, limited to Justice Sharma's dismissal of her counterclaim. In her September 17, 2019 notice of appeal, Ms. Arvanitis asserts that she is not a vexatious litigant and that she should not be barred from pursuing justice. She thereby directly raised the vexatious litigant order in her appeal. Justice Dickson refused to grant Ms. Arvanitis an extension of time to appeal, and the appeal was dismissed.
- [30] In my view, given these circumstances, Justice Griffin was correct to conclude that Ms. Arvanitis' second attempt to appeal the August 15, 2019 order is a nullity.
- [31] Second, Ms. Arvanitis alleges that Justice Griffin erred in ignoring the merits of her appeal. Justice Griffin did not, in fact, ignore the merits of Ms. Arvanitis' appeal. Rather, she found it unnecessary to review the merits in light of the lengthy delay and resulting prejudice to Slater Vecchio. Ms. Arvanitis' application for an extension of time was brought over 30 months after the expiry of her deadline to appeal. Justice Griffin concluded that in light of the Davies criteria, and this lengthy unexplained delay, it was not in the interests of justice to grant the extension. In light of this conclusion, it was unnecessary for Justice Griffin to engage in any detailed review of the merits.
- [32] Third, Ms. Arvanitis alleges that Justice Griffin failed to account for Ms. Arvanitis' health problems and self-represented status as justifications for the delay. However, Justice Griffin did not fail to account for these factors, she simply did not place the weight on them that Ms. Arvanitis believes they deserved. Justice Griffin stated:

- [29] Ms. Arvanitis submits that the reason for the delay is that she is disabled, self-represented and has suffered from extreme stress due to the underlying dispute she has with Slater Vecchio. While I of course have sympathy for anyone suffering stress and health problems, I note that many litigants face these problems and nevertheless meet the time periods. I also appreciate the significance of the order that she seeks to appeal. However, I am not persuaded that she has established good reason for the inordinate delay in this case.
- [33] Ms. Arvanitis' arguments on this point invite this Court to engage in a re-hearing of Justice Griffin's order, which is not the role of the review division. Justice Griffin acknowledged Ms. Arvanitis' health issues and self-represented status, but was not persuaded that these issues established good reason for her 30-month delay in bringing her appeal of the November 21, 2019 order. I see no reviewable error in her analysis.
- [34] In my view, Ms. Arvanitis has not demonstrated any error in Justice Griffin's judgment, and therefore the review application must be dismissed.

Order of Justice Grauer: 2022 BCCA 290

- [35] Justice Grauer's order dismissed Ms. Arvanitis' application for an extension of time to apply to vary or cancel the October 29, 2019 order of Justice Dickson.
- [36] Ms. Arvanitis alleges that Justice Grauer's order reflects an error in the form of an irregular application of the law. She argues that Justice Grauer applied the law irregularly by depriving Ms. Arvanitis of the chance to appeal Justice Sharma's vexatious litigant order at the same time as he permitted Slater Vecchio to set down its Vexatious Litigant Application in this Court. In my view, Justice Grauer did not err or apply the law irregularly in the manner alleged by Ms. Arvanitis.
- [37] The application before Justice Grauer was to extend the time for Ms. Arvanitis to apply to vary or cancel the order of Justice Dickson. Justice Grauer cited and applied the criteria from Davies. He noted the lengthy nature of the delay, the application having been brought some 33 months after Justice Dickson's order. He explained that Ms. Arvanitis' application focussed on the alleged merits of her appeal, which she argued outweighed the length of the delay and any prejudice to Slater Vecchio. Justice Grauer disagreed with Ms. Arvanitis' assessment of the strength of her appeal. Justice Grauer concluded it was not in the interests of justice to grant the extension given the inordinate delay and resulting prejudice to Slater Vecchio. Ms. Arvanitis has not identified any error of law or principle in Justice Grauer's analysis, nor has she shown that he misconceived the facts.

- [38] The procedural orders granted by Justice Grauer--including granting Slater Vecchio leave to set down its Vexatious Litigation Application for hearing on September 6--were within his jurisdiction to make under s. 30 of the Court of Appeal Act. The orders were a principled exercise of this jurisdiction given the history of the proceeding and the interrelated nature of the issues raised on the various applications. Ms. Arvanitis does not identify any reviewable error in Justice Grauer's procedural orders.
- [39] For these reasons, I would also dismiss the application to vary or cancel the order of Justice Grauer.

Summary on Ms. Arvanitis' applications to vary or cancel orders

- [40] For the forgoing reasons, I would dismiss Ms. Arvanitis' applications to vary or cancel the orders of Justices DeWitt-Van Oosten, Marchand, Griffin and Grauer. Ms. Arvanitis has not demonstrated any basis for interference with any of these orders by a review division.

Issue b): Should a vexatious litigant order be made?

Legal framework

- [41] Slater Vecchio's Vexatious Litigant Application is brought pursuant to s. 22 of the Court of Appeal Act, which provides:

Vexatious proceedings

22 (1) If the court or a justice is satisfied that a person has habitually, persistently and without reasonable cause commenced or continued vexatious proceedings in any of the courts of British Columbia, the court or justice may order that the person must not bring or continue an appeal or application for leave to appeal in the court without leave of the court or a justice.

- (2) The court or a justice may make an order under subsection (1)
- (a) on application by any person or on the court or justice's own initiative, and
 - (b) only if the person referred to in subsection (1) has been given an opportunity to make written submissions or otherwise be heard.
- (3) In making an order under subsection (1), the court may dismiss an appeal or application for leave to appeal previously brought to the court by the person.
- (4) If a justice makes an order under subsection (1),
- (a) the justice may refer the matter to the court, and
 - (b) the court may, without receiving further written submissions or holding a further hearing, dismiss an appeal or application for leave to appeal previously brought to the court by the person.

- (5) In dismissing an appeal or application for leave to appeal under subsection (3) or (4), the court may impose terms and conditions, including the payment of costs.

[42] Section 29 of the Former Court of Appeal Act states the Court's power to make a vexatious litigant declaration in somewhat different terms:

Vexatious appeals

29 If, on the application of any person, a justice is satisfied that a person has habitually, persistently and without reasonable cause commenced vexatious proceedings in the court, the justice may, after hearing that person or giving that person an opportunity to be heard, order that proceedings must not be brought or commenced in the court without leave of a justice.

[43] An order declaring that a person is a vexatious litigant is not to be made lightly. It is an extraordinary form of order that alters a person's right of access to the courts: *Hokhold v. Gerbrandt*, 2017 BCCA 216 at para. 21 (Newbury J.A. in Chambers). The purpose of such an order is to allow the Court to control its own process and prevent an abuse of that process by repetitive unmeritorious proceedings that needlessly expend judicial resources and cause unnecessary expense to other parties: *Gonzales v. British Columbia (Attorney General)*, 2018 BCCA 421 at para. 21 (Savage J.A. in Chambers).

[44] In *Lindsay v. Canada (Attorney General)*, 2005 BCCA 594 at para. 25, citing *Lang Michener Lash Johnston v. Fabian* (1987), 37 D.L.R. (4th) 685 (Ont. H.C.) (Ont. H.C.J., per Henry J. at para. 19), this Court set out a non-exhaustive list of factors to be considered on an application for a vexatious litigant declaration:

- (a) the bringing of one or more actions to determine an issue which has already been determined by a court of competent jurisdiction constitutes a vexatious proceeding;
- (b) where it is obvious that an action cannot succeed, or if the action would lead to no possible good, or if no reasonable person can reasonably expect to obtain relief, the action is vexatious;
- (c) vexatious actions include those brought for an improper purpose, including the harassment and oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights;
- (d) it is a general characteristic of vexatious proceedings that grounds and issues raised tend to be 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) in determining whether proceedings are vexatious, the court must look at 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 is one factor to be considered in determining whether proceedings are vexatious;
 - (g) the respondent's conduct in persistently taking unsuccessful appeals from judicial decisions can be considered vexatious conduct of legal proceedings.
- [45] In cases decided under s. 29 of the Former Court of Appeal Act this Court has held that evidence of a party's conduct in the lower courts may inform a vexatious litigant finding in the Court of Appeal, although it is not in itself sufficient to ground such an order. In general, the existence of multiple proceedings in the Court of Appeal was considered necessary to warrant an order under s. 29: *Carten v. Carten*, 2015 BCCA 201 at para. 31 (Bennett J.A. in Chambers); *Extra Gift Exchange Inc. v. The Owners, Strata Plan LMS 3259*, 2014 BCCA 228 at para. 34 (Garson J.A. in Chambers).

Discussion

- [46] Ms. Arvanitis argues that she cannot conceivably be a vexatious litigant in the Court of Appeal given that she has, to date, been unsuccessful in initiating even a single appeal. She denies that her applications to extend time to appeal, or to vary orders denying her extensions of time, demonstrate a pattern of vexatious conduct, as they are not repetitive and they relate to different orders of the Supreme Court. Ms. Arvanitis says she has simply been attempting to exercise her rights of appeal as best she can, bearing in mind the difficulties she faces as a result of her health issues and lack of legal representation. She denies that her attempts to initiate appeals are motivated by any purpose other than to pursue a remedy for what she perceives as the serious injustice she has suffered as a result of the Supreme Court orders.
- [47] Slater Vecchio argues that many of the factors cited in *Lindsay* are present here, including Ms. Arvanitis' two attempts to appeal the August 15, 2019 order of Justice Sharma, her pursuit of moot appeals, and her filing of non-compliant and duplicative material in this Court. Slater Vecchio also argues that the amendment to the vexatious litigant power in the Court of Appeal Act results in substantive change to the test for a vexatious litigant finding in this Court, creating a "new threshold" for considering vexatious conduct in lower courts. Whereas s. 29 of the Former Court of Appeal Act referenced vexatious proceedings "in the court", s. 22(1) of the Court of Appeal Act replaces this language with "in any of the courts of British Columbia" (emphasis added). Slater Vecchio argues that the amendment reflects a legislative intent to capture situations where an appellant "was inevitably going to transition from a vexatious litigant into a vexatious appellant". Slater Vecchio does not suggest that the statutory amendment undermines the prior jurisprudence of this Court to the extent that it states the general objectives of a vexatious litigant finding.

- [48] In my view, the change in statutory language does not have the significance that Slater Vecchio seeks to place on it. The wording in s. 29 of the Former Court of Appeal Act did not prevent this Court from considering a pattern of vexatious conduct by a litigant in the courts below. Such a pattern of conduct could inform the Court's conclusion on a vexatious litigant application, although the focus remained on the litigant's conduct in the Court of Appeal. Rather than establishing a "new threshold", as Slater Vecchio contends, the language of s. 22(1) gives the Court broader and more explicit discretion to rely on vexatious conduct by a litigant in the courts below in determining whether an abuse of this Court's process has occurred. However, a vexatious litigant declaration in the Court of Appeal does not automatically follow on a declaration that a party is a vexatious litigant in another court. The objective of a vexatious litigant declaration under s. 22(1) of the Court of Appeal Act must still be to prevent an abuse of this Court's process. This requires an analysis of the litigant's actual conduct before the Court.
- [49] In this case, Ms. Arvanitis' conduct does share some features with the type of conduct described in Lindsay. Ms. Arvanitis twice attempted to appeal Justice Sharma's August 15, 2019 order, although she justifies this by explaining her belief that the two appeals related to different aspects of the order. Ms. Arvanitis initially attempted to pursue moot appeals--that is, appeals from Justice Duncan's interim injunction order and Justice Dillon's arrest warrant--although she abandoned those aspects of her appeal in the hearing before Justice Grauer. Ms. Arvanitis has persistently been unsuccessful in her attempts to appeal various Supreme Court orders, and has pursued unmeritorious applications to vary. She has been found to be a vexatious litigant in the Supreme Court.
- [50] However, I am not persuaded at this stage of the proceeding that the extraordinary remedy of a vexatious litigant order is necessary to prevent an abuse of this Court's process. With limited exception, Ms. Arvanitis' applications in this Court have not been duplicative or abusive. The appeal proceedings have not been brought for an improper purpose. I accept that Ms. Arvanitis was genuinely motivated to secure the appellate remedies to which she believes she is entitled. While Ms. Arvanitis has been unsuccessful in her attempts to appeal, that in itself is not a basis for a vexatious litigant finding. Furthermore, with Ms. Arvanitis' three applications to vary dismissed, there are no outstanding proceedings in this Court, and, given the status of the Supreme Court proceedings, no new appeals are imminent. I accept Ms. Arvanitis' submission that she shares Slater Vecchio's desire for closure.
- [51] In these circumstances, it does not appear to me that a vexatious litigant order is necessary at this time to prevent the abuse of this Court's process. It is, of course, open to Slater Vecchio to renew their application if circumstances change.

Conclusion

[52] I would dismiss Ms. Arvanitis' three applications to vary or cancel the orders of Justices DeWitt-Van Oosten, Marchand, Griffin and Grauer. I would also dismiss Slater Vecchio's application for a vexatious litigant order.

[53] In the course of the hearing, counsel for Slater Vecchio raised a collateral concern as to the jurisdictional basis for paragraph 4(c) of Justice Sharma's August 15, 2019 order. He invited the Court to direct an amendment to the wording of this paragraph. I would not make any such direction, which appears to me to be beyond the scope of any issue properly before the Court in this hearing.

[54] Given the divided success on the applications, in my view it is appropriate to order that each party bear their own costs.

"The Honourable Madam Justice Horsman"

I AGREE:

"The Honourable Madam Justice Fenlon"

I AGREE:

"The Honourable Mr. Justice Abrioux"

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Prepared on 29 October 2026 · Esheria