

CANADA / JUDGMENT

Arvanitis v. Slater Vecchio LLP

2022 BCCA 290

COURT

British Columbia Court of Appeal

DECIDED

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2022 BCCA 290 Arvanitis v. Slater Vecchio LLP

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Arvanitis v. Slater Vecchio LLP,

2022 BCCA 290

Date: 20220812

Dockets: CA46372; CA46373; CA46375

CA47677; CA48269; CA48270

Between:

Vicky Arvanitis

Appellant

(Defendant)

And

Slater Vecchio LLP

Respondent

(Plaintiff)

Before:

The Honourable Mr. Justice Grauer

(In Chambers)

On appeal from: Orders of the Supreme Court of British Columbia, dated

June 20, 2019 (Slater Vecchio LLP v. Arvanitis, 2019 BCSC 1156, Vancouver Docket S195495), July 12, 2019 (Slater Vecchio LLP v. Arvanitis, Vancouver Docket S195495), August 15, 2019 (Slater Vecchio LLP v. Arvanitis, 2019 BCSC 2369, Vancouver Docket S195495), November 21, 2019 (Slater Vecchio LLP v. Arvanitis, 2019 BCSC 2370, Vancouver Docket S195495) and July 14, 2021 (Slater Vecchio LLP v. Arvanitis, 2021 BCSC 1710, Vancouver Docket S195495).

Oral Reasons for Judgment

Counsel for the Appellant:

E.L. Kornfeld

Counsel for the Respondent:

D.K. Georgetti

Place and Date of Hearing:

Vancouver, British Columbia

August 12, 2022

Place and Date of Judgment:

Vancouver, British Columbia

August 12, 2022

Summary:

Application to extend time to vary the order of a justice and cross-application for leave to amend an application for a vexatious litigant order. Held: Application dismissed, cross-application allowed with directions. The applicant sought an extension of time to vary the order of a justice, pronounced almost three years ago. The delay was inordinate and not adequately explained, and there was no merit to the proposed appeal. Given the applicant's litigation history, leave to amend the application for a vexatious litigant order (which had previously been adjourned generally) was granted, and the application set before a division.

GRAUER J.A.:

Introduction

[1] Before me are cross-applications.

- [2] Ms. Arvanitis applies for an extension of time to vary the October 29, 2019 order of Justice Dickson dismissing her application for an extension of time to appeal three orders:
- 1) the order of Justice Duncan pronounced June 20, 2019, granting an interlocutory injunction (since superseded by a permanent injunction);
 - 2) the order of Justice Dillon pronounced July 12, 2019, issuing a bench warrant; and
 - 3) the order of Justice Sharma pronounced August 15, 2019, granting summary judgment to Slater Vecchio LLP on its claim in defamation, striking Ms. Arvanitis' counterclaim, ordering that Justice Duncan's interim injunction continue as a permanent injunction, and issuing a vexatious litigant order against Ms. Arvanitis.
- [3] As I explain below, in oral submissions before me by her counsel, Ms. Arvanitis limited the scope of the appeal she seeks to pursue.
- [4] Slater Vecchio applies for leave to amend and re-set its application to have Ms. Arvanitis declared a vexatious appellant, which was adjourned generally by consent at the hearing before Justice Dickson.

Background

- [5] What follows is a very brief summary of a complicated history.
- [6] Ms. Arvanitis was formerly represented by Slater Vecchio in a personal injury claim. After disagreements, Ms. Arvanitis sued the firm in negligence. Justice Sigurdson dismissed Ms. Arvanitis' claim (2016 BCSC 1612), and after further submissions, ordered her to pay Slater Vecchio's costs (2017 BCSC 155).
- [7] Ms. Arvanitis never appealed those decisions. Nevertheless, she began posting negative comments about the firm on various online forums, including on the personal accounts of the firm's employees and the children of one partner. She also contacted current and former clients of the firm to make negative comments.
- [8] At that point, Slater Vecchio brought a claim in defamation and sought an interlocutory injunction requiring Ms. Arvanitis to remove the posts and refrain from posting further statements about the firm. Ms. Arvanitis filed a response and a counterclaim.
- [9] Justice Duncan granted the interlocutory injunction (2019 BCSC 1156). This was the first order that Ms. Arvanitis sought to appeal, but she now agrees that such an appeal would be moot, and she no longer wishes to pursue it.
- [10] As it appeared that Ms. Arvanitis did not remove the posts that Justice Duncan ordered her to remove, Slater Vecchio brought an application for her to be found in contempt of court. Justice Dillon issued a warrant for her arrest when she did not attend the contempt hearing. This was the second order Ms. Arvanitis sought to appeal, but again, she now agrees that this appeal also would be moot, and she no longer pursues it. Justice Groves ultimately found her

to be in contempt of court and ordered her to remove the posts immediately (unpublished oral reasons dated 22 July 2019). Ms. Arvanitis has not appealed Justice Groves' decision.

- [11] Slater Vecchio applied for summary judgment on its defamation claim, and for an order striking Ms. Arvanitis' counterclaim. It also applied to have Ms. Arvanitis declared a vexatious litigant. On August 15, 2019, Justice Sharma made orders (2019 BCSC 2369):
- a) granting Slater Vecchio summary judgment on its defamation action;
 - b) dismissing Ms. Arvanitis' counterclaim;
 - c) directing that Justice Duncan's interim injunction would continue permanently;
 - d) declaring Ms. Arvanitis to be a vexatious litigant and limiting her ability to commence claims against Slater Vecchio, its partners and its employees; and
 - e) requiring Ms. Arvanitis to provide copies of all correspondence exchanged with current and former clients of the firm.

This was the third order that Ms. Arvanitis sought to appeal.

- [12] In September 2019, Ms. Arvanitis filed her notices of appeal from the three orders, applying also for an extension of time and a "no fees order".
- [13] Justice Dickson heard these applications on October 2, 2019, and on October 29, 2019, dismissed them (2019 BCCA 481). Justice Dickson noted that all three proposed appeals were bound to fail, finding that two of them (the appeals from the orders of Justice Duncan and Justice Dillon) were moot, and that Ms. Arvanitis had demonstrated no arguable ground of appeal with respect to the third (her appeal from the order of Justice Sharma).
- [14] Before me, through her counsel, Ms. Arvanitis explained that she now seeks to appeal only that part of Justice Sharma's order declaring her a vexatious litigant, and so her application to vary Justice Dickson's order, if permitted to proceed, will be limited to that aspect. She maintains that Justice Dickson did not focus on the vexatious litigant aspect of Justice Sharma's order.
- [15] On July 14, 2021, Justice Gomery found that there was a binding settlement agreement in effect between Ms. Arvanitis and Slater Vecchio (2021 BCSC 1710). Ms. Arvanitis appealed. On November 3, 2021, Justice DeWitt-Van Oosten ordered Ms. Arvanitis to post security for the costs of that appeal. She did not pay the security as ordered, however, and so on January 31, 2022, Justice Marchand dismissed her appeal as abandoned.
- [16] Ms. Arvanitis has since applied for extensions of time to apply to a division to review the orders of Justice DeWitt-Van Oosten and Justice Marchand. That application is set for hearing in chambers on October 31, 2022.

- [17] Today, Ms. Arvanitis applies for an extension of time to apply to a division to review Justice Dickson's order insofar as it pertains to her proposed appeal from the vexatious litigant order pronounced by Justice Sharma on August 15, 2019.
- [18] Under a separate court file, Ms. Arvanitis filed a second notice of appeal in respect of Justice Sharma's order of August 15, 2019, as well as a later order of Justice Sharma extending the vexatious litigant order to cover litigation against Slater Vecchio's counsel and his firm. Ms. Arvanitis applied for an extension of time to bring those appeals.
- [19] On hearing that application on June 30, 2022, Justice Griffin dismissed the appeal from Justice Sharma's August 15, 2019 order as a nullity on the ground that it already stood dismissed as a result of Justice Dickson's order, and declined to extend the time to appeal the later order of Justice Sharma (2022 BCCA 253).
- [20] Ms. Arvanitis has applied for a review of Justice Griffin's order by a division of this Court. That application is set for hearing on September 6, 2022.
- [21] Slater Vecchio seeks leave to amend its application for a "vexatious appellant" order, and to have that application set for hearing on September 6, 2022, the same date that is set for the hearing of Ms. Arvanitis' application for review of Justice Griffin's order. Slater Vecchio also asks that Ms. Arvanitis' chambers applications set for October 31, 2022, be heard at the same time on September 6, as it seeks to have them dismissed as part of its proposed application.
- [22] I turn first to Ms. Arvanitis' application to extend the time to apply to review Justice Dickson's order.

Ms. Arvanitis' application for an extension of time

- [23] A party may apply to a division of this Court for a review of an order made by a single justice, pursuant to section 29 of the Court of Appeal Act, SBC 2021, c 6 (formerly section 9(6) of the Court of Appeal Act, RSBC 1996, c 77). Such an application must be brought not more than seven days of the order being made: Court of Appeal Rules, BC Reg 120/2022, R 62(2) (formerly rule 34 of the Court of Appeal Rules, BC Reg 297/2001). I note that this application was brought on July 8, 2022, some 33 months after Justice Dickson pronounced her order.
- [24] The factors considered on an application to extend time to appeal were set out in *Davies v CIBC* (1987), 15 BCLR (2d) 256 at 259-260, 1987 CanLII 2608 (CA) as follows:
- a) Was there a bona fide intention to appeal?
 - b) When were the respondents informed of the intention?
 - c) Would the respondents be unduly prejudiced by an extension of time?
 - d) Is there merit in the appeal?
 - e) Is it in the interest of justice that an extension be granted?

- [25] The Davies criteria apply in applications to extend other time limits to the extent that they are relevant and with appropriate modifications: *Barnes v Letkeman*, 2016 BCCA 455 at para 10 (Savage JA in Chambers).
- [26] Whether the extension is in the interests of justice is the primary concern: Davies at 260-261.
- [27] In her submissions before me, Ms. Arvanitis grounded her application on one factor. She asserted that there was no merit whatsoever to the vexatious litigant order pronounced by Justice Sharma that she seeks to appeal. There was, she says, simply no basis for it in accordance with the applicable criteria, and it was, in effect, a nullity. Given that it should never have been made, she submits, the length of the delay and any prejudice to Slater Vecchio are irrelevant. The lapse of time has no bearing. Since the order was wrong, it must be righted.
- [28] These submissions were made in a context that focused on the difficulties Ms. Arvanitis faced as a person with disabilities; litigating without counsel; seeking adjournments not to delay proceedings but to allow herself to prepare better; and facing innumerable applications, emails and intrusions from counsel for Slater Vecchio.
- [29] With respect to the proceedings before Justice Sharma, Ms. Arvanitis notes that at para 44 of her reasons for judgment, Justice Sharma sets out the key indicators for granting relief in the form of a vexatious litigant declaration as discussed in *Rafique v AWM-Alliance Real Estate Group Ltd*, 2019 BCSC 247 at para 51. Ms. Arvanitis submits that none of those criteria was met in this case. For instance, she maintains, she had brought only one previous action to determine an issue already determined by a court of competent jurisdiction, not several. It was not obvious that her actions could not succeed, nor was there any improper purpose.
- [30] In my view, these points go, at best, to whether there was any arguable case to be made against the declaration before Justice Sharma, not to whether her decision was without merit. The issuing of a vexatious litigant declaration is a discretionary matter, and as such, is entitled to deference on appeal: *Jacques v Muir*, 2018 BCCA 174 at para 21. I do not agree that there were no grounds for the finding. Justice Sharma discussed the grounds upon which she relied at paras 46-50. They include not just the action Ms. Arvanitis brought against Slater Vecchio in negligence, for which she was required to post security for costs, but also the Provincial Court actions that were consolidated, and her counterclaim in Slater Vecchio's defamation action, all of which dealt with the same issues already covered by Justice Sigurdson. Moreover, there were clear threats to bring more proceedings not only against Slater Vecchio, but also against firm members and employees. Taking Justice Sharma's reasons as a whole, I cannot agree that there was no basis upon which she could reasonably exercise her discretion to declare Ms. Arvanitis a vexatious litigant.
- [31] In any event, the merits are assessed more stringently when there has been inordinate delay: *Fred Walls & Son Holdings Ltd (Re)*, 2003 BCCA 132 at para 22 (Hollinrake JA in Chambers). As was the case before Justice Griffin, Ms. Arvanitis has offered no explanation

whatsoever for the delay in this case--approaching three years. Nor did she adduce any evidence from which I could conclude that she had formed a bona fide intention to seek review within or anywhere close to the prescribed time period, or that she informed the respondent of her intention in a timely way. I accept that she has faced the challenges she refers to in her affidavit concerning her ability to represent herself and comply with strict time limits in light of her physical and mental disabilities, but these do not explain the inordinate delay that occurred here.

- [32] Given that delay, the burden is on Ms. Arvanitis to show why Slater Vecchio would not be prejudiced by an extension: *El-Nachar v Alsakka*, 2002 BCCA 191 at para 22 (Southin JA in Chambers). She has not met this burden and I am satisfied that, in these circumstances, granting an extension would give rise to prejudice on the part of Slater Vecchio.
- [33] Notwithstanding her forceful submissions, Ms. Arvanitis has not satisfied me that there was any error in Justice Dickson's conclusion that it would not be in the interests of justice to grant the requested extension of time. It is evident that the matter of the vexatious litigant declaration was front and centre before Justice Dickson, and Justice Dickson's conclusion has become even more inescapable with the passage of some 33 months since she rendered her decision. In the circumstances, I conclude that it is even less in the interests of justice to grant the further extension requested for seeking a variation of Justice Dickson's order.
- [34] The application for an extension of time to apply to vary Justice Dickson's order is dismissed.

Slater Vecchio's cross-application

- [35] Following the hearing before Justice Dickson on October 2, 2019, Slater Vecchio's application that Ms. Arvanitis be declared a "vexatious appellant" was adjourned generally by consent.
- [36] Section 22 of the Court of Appeal Act deals with "vexatious proceedings" as follows:
- 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.

[37] Ms. Arvanitis has commenced appeals related to this dispute under at least six different court file numbers (CA46372, CA46373, CA46375, CA47677, CA48269, and CA48270). I have briefly reviewed above many of her recent filings in this Court. There have been others as well. Slater Vecchio complains that the effect is this: Ms. Arvanitis files an appeal out of time, keeps it alive it by applying for an extension of time to appeal, and when that is lost, may resurrect the appeal years later (as her application here demonstrates) by seeking an extension of time to apply for a review of the order denying an extension of time to appeal, and then, possibly, applying to a division for a review of that order if unsuccessful.

[38] In its proposed application, Slater Vecchio seeks not only a declaration under section 22(1) of the Court of Appeal Act, but also, pursuant to section 22(3), an order dismissing:

- a) Ms. Arvanitis' application to vary or discharge the order of Justice Griffin in files CA48269 and CA48270 (set for hearing September 6, 2022);
- b) Ms. Arvanitis' application for an extension of time to apply to vary or discharge the orders of Justice DeWitt-Van Oosten and Justice Marchand in file CA47677 (set for hearing October 31, 2022); and
- c) any other proceedings or applications filed by Ms. Arvanitis.

[39] Based on the procedural history of the dispute and the jurisdiction found in section 30 of the Court of Appeal Act, I consider it just and appropriate to grant Slater Vecchio leave to amend and re-set its application under section 22 of the Court of Appeal Act. It seems to me appropriate that its application under section 22 be heard together with Ms. Arvanitis' application to the division scheduled for September 6. That is set for a full day, and I do not see any difficulty with timing.

[40] Whether it is appropriate at that time also to consider the applications scheduled for October 31, 2022, as part of Slater Vecchio's application, I will leave to the division to determine on September 6, 2022. Slater Vecchio may bring its application in the form requested, but it will be open to Ms. Arvanitis to argue that those two chambers applications should be left to be determined in chambers as scheduled. In the meantime, the hearing date of October 31, 2022 is preserved.

[41] Subject to that direction, the cross-application is accordingly granted.

"The Honourable Mr. Justice Grauer"

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