

CANADA / JUDGMENT

Azad v. Mrsic

2020 BCSC 1534

COURT

Supreme Court of British Columbia

DECIDED

28 September 2020

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2020 BCSC 1534 Azad v. Mrsic IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Azad v. Mrsic, 2020 BCSC 1534 Date: 20200928 Docket: H190840 Registry: Vancouver Between: Pindar Azad Petitioner And Robert Mrsic, Rashpal Singh Panesar and All Tenants or Occupiers of the Subject Lands and Premises Respondents Before: The Honourable Madam Justice Jackson Oral Ruling Re Notice of Appeal from Master In Chambers (Via Teleconference) Counsel for the Appellant Robert Mrsic: D. Gautam Counsel for the Respondent/Petitioner Pindar Azad: K.A. Robertson No other appearances Place and Date of Hearing: Vancouver, B.C. September 28, 2020 Place and Date of Judgment: Vancouver, B.C. September 28, 2020

- [1] THE COURT: I am prepared to give oral judgment in this matter. If a transcript is ordered I may make changes for style or grammar, but the substance of my reasons will not change.
- [2] The appellant, Robert Mrsic, filed a notice of appeal on September 22, 2020, in which he seeks to appeal the order nisi of Master Muir pronounced January 23, 2020. An appeal from an order of the decision of a master requires the filing of a notice of appeal within 14 days after the order is made: Supreme Court Civil Rules, B.C. Reg. 168/2009, R. 23-6(8.1) [Rules].
- [3] The notice of appeal seeks various relief including, albeit obliquely, an extension of the time to file an appeal. I will address that issue first.
- [4] The parties are in agreement that the test for considering whether to extend the time to appeal a master's decision in the context of an order nisi is the one set out in *Royal Bank of Canada v. Davis*, 2016 BCSC 806, at para. 23, and requires the court to consider the following factors:
- (a) Was there a bona fide intention to appeal within the time period?
 - (b) Was the respondent informed of the intention to appeal?
 - (c) Will the respondent be unduly prejudiced by an extension of time?
 - (d) Is there merit in the appeal?
 - (e) Is it in the interests of justice to grant the extension?

- [5] This final question is paramount in the analysis.
- [6] The appellant concedes he did not have a bona fide intention to appeal during the appeal period. As a matter of logic, the respondent could not have been, and was not, informed of any intention to appeal. The appellant concedes that is the case.
- [7] With respect to the merits, the appellant seeks to raise two issues not raised before Master Muir, one involving the rate of interest and one involving the calculated redemption amount.
- [8] The Supreme Court of Canada's decision in *Krayzel Corp. v. Equitable Trust Co.*, 2016 SCC 18 [Krayzel], is dispositive of the issue the respondent seeks to pursue with respect to interest. I quote from paragraph 33 of that decision: That said, an interest rate increase triggered by the mere passage of time (and not by default), such as that imposed under the First Renewal Agreement, clearly does not offend s. 8 [of the Interest Act, R.S.C. 1985, c. I- 15].
- [9] The terms of the mortgage at issue in this case call for an increase in the interest rate as a function of, and triggered by, the passage of time. The interest rate increase is not triggered by a default by the borrower. As a result, the facts before me are distinguishable from the facts before Mr. Justice Tysoe, then of this Court, in *TD Trust Company v. Guinness* (1995), 12 B.C.L.R. (3d) 102 (S.C.). I note the Supreme Court of Canada in *Krayzel* was aware of the TD Trust Company decision: *Krayzel* at para. 32.
- [10] With respect to merits of the issue respecting calculation of the redemption amount, no notice of that issue was provided to the respondent in the notice of appeal, and therefore they had no opportunity to provide responding evidence on that point. I note the statement of accounting was provided to the appellant's counsel during the process leading up to the issuing of the order nisi and no issue was taken with respect to the redemption amount at the hearing before Master Muir.
- [11] With respect to prejudice, I agree with the respondent that given the appellant has deposed he is unable to pay the redemption amount at the rate of interest agreed to by the parties, there is an increasing risk to the respondent caused by ongoing delay.
- [12] The interests of justice include the finality of litigation on its merits: *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44 at para. 18. The appellant had the benefit of legal counsel with respect to the dispute between the parties even though counsel did not accompany the appellant at the hearing before Master Muir. The appellant had the opportunity to appeal within the time limit prescribed by the Rules. He did not do so. He had the opportunity to apply for an extension of the redemption period and did not do so, either before it expired or since. He was aware at all times the interest rate was 18 percent, as is reflected in the evidence before me.

- [13] On January 23, 2020, the order nisi was issued. The redemption period expired July 23, 2020. In advance of its expiry the respondent reminded the appellant the redemption period would be expiring. The appellant did not file the notice of appeal until after the redemption period had expired.
- [14] The appellant has not acted diligently. Considering all of the circumstances reflected in the evidence before me, I conclude the interests of justice do not warrant granting an extension of time to file an appeal which, in my preliminary review, has little likelihood of success.
- [15] The appellant's application to extend the time to file his notice of appeal is dismissed. The notice of appeal is also dismissed on the basis that it was filed beyond the time limit prescribed under the Rules.
- [16] The respondent is entitled to costs of this application payable by the appellant.
- [17] MR. GAUTAM: My Lady, if I may, please?
- [18] THE COURT: Something arising from my reasons? Yes, Mr. Gautam?
- [19] MR. GAUTAM: Yes, just one thing My Lady. If you could please clarify that nothing in these reasons would affect a subsequent application for an extension of the redemption period because different principles apply to that.
- [20] THE COURT: No, I won't make that determination. That would be a matter for the judge who heard any such application should there ever be one. It further seems to me one of the things that judge might take into account is delay. I decline to make any comments with respect to the effect this decision might have on any subsequent application.
- [21] MR. GAUTAM: Thank you My Lady, that is sufficient.
- [22] MS. ROBERTSON: Thank you My Lady.
- [23] THE COURT: Thank you. "Jackson, J."

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