

CANADA / JUDGMENT

Booty v. Hutton

2013 BCCA 71

COURT

British Columbia Court of Appeal

DECIDED

19 February 2013

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2013 BCCA 71 *Booty v. Hutton* COURT OF APPEAL FOR BRITISH COLUMBIA Citation: *Booty v. Hutton*, 2013 BCCA 71 Date: 20130219 Docket: CA022525 CA037153 CA037152 No. CA022525 Between: Charlein Booty Respondent (Petitioner) And Gordon Stanford Hutton (Allen Hutton, Agent) Appellant (Respondent) No. CA037153 Between: Gordon Stanford Hutton and Allen Gordon Hutton Appellants (Petitioners) And Charlein Booty Respondent (Respondent) No. CA037152 Between Allen Hutton Appellant (Plaintiff) And Harvey Zelter and Dawson Service Ltd. Respondent (Defendant) And Jennifer Lim Respondent (Defendant) And Segovia Jose Guillen and Choice Selections Motor Group Ltd. Respondent (Defendant) And Insurance Corporation of British Columbia Respondent (Third Party) Before: The Honourable Madam Justice Garson (In Chambers) On appeal from: Supreme Court of British Columbia, November 20, 1996 (*Booty v. Hutton*, Vancouver Docket No. A932373); November 1, 2004 (*Hutton v. Zelter*, New Westminster Docket Nos. S79960, S76306, S76307); September 22, 2004 (*Hutton v. Booty*, Vancouver Docket No. S016658) Appellant appearing in person: No one appearing for the Respondent: Place and Date of Hearing: Vancouver, British Columbia December 13, 2012 Place and Date of Judgment: Vancouver, British Columbia February 19, 2013 Reasons for Judgment of the Honourable Madam Justice Garson:

- [1] These are ex parte applications for indigent status in three separate matters, as well as for an order granting leave to apply to this Court, as is required by a vexatious litigant order previously made against the applicant, Mr. Hutton, by a division of this Court. Appeal CA037152 - Motor Vehicle Claims
- [2] The first application pertains to three motor vehicle accidents in which Mr. Hutton was involved. On November 1, 2004, in the court below, Bernard J. dismissed Mr. Hutton's claims arising from the three motor vehicle accidents.
- [3] Mr. Hutton filed a notice of leave to appeal the Bernard J. orders on May 26, 2009. The appeal came before Prowse J.A. in chambers. She dismissed his application for leave to appeal (unreported oral judgment: *Hutton v. Zelter* (10 June 2009), Vancouver CA037152). The appeals were well out of time.

- [4] Mr. Hutton applied to vary Justice Prowse's order. The application came before a division of this Court (Hall, Chiasson, and Garson JJ.A.), and was dismissed: (2010 BCCA 186). Appeal CA022525 and CA037153 - Estate Claims
- [5] The second and third applications pertain to an estate dispute.
- [6] On November 21, 1996, Mr. Hutton's father filed a Notice of Cross Appeal to set aside an order of Boyd J. granting judgment in favour of Ms. Booty (CA022525). On November 27, 1997, the parties were notified that the appeal was being placed on the inactive list. The appeal was dismissed as abandoned in 1998.
- [7] In 2004, Mr. Hutton appeared before Shabbits J. in an effort to revive the estate litigation. Justice Shabbits dismissed all three of Mr. Hutton's applications, as they related to the estate litigation that had been dealt with in the 1990s.
- [8] On May 26, 2009, Mr. Hutton filed a Notice of Appeal appealing Shabbits J.'s 2004 orders (CA037153). He also filed a Notice of Motion seeking to reinstate the appeal of Boyd J.'s 1996 order (CA022525).
- [9] The applications all came before Tysoe J.A. who dismissed Mr. Hutton's applications to reinstate (CA022525) and to extend time to file (CA037153). A review of Tysoe J.A.'s order came before a division of this Court (Hall, Chiasson, and Garson JJ.A.), and was dismissed: 2010 BCCA 185. Applications now before the Court
- [10] A full history of this litigation is set out by Justice Hall in his two sets of reasons for judgment: 2010 BCCA 185 at paras. 1-6; 2010 BCCA 186 at paras. 1-3. It is unnecessary for me to repeat it.
- [11] On April 15, 2010, in the appeal of the estate matters (2010 BCCA 185), Justice Hall, speaking for the Court, made the following vexatious litigant order (at para. 15): Orders are sometimes made in applications in Supreme Court under s. 18 of the Supreme Court Act, R.S.B.C. 1996, c. 443, and in this Court under s. 29 of the Court of Appeal Act, R.S.B.C. 1996, c. 77, or by the Court on its own motion to require a litigant to obtain leave before filing further material. An instance of the latter occurred in the case of *Croll v. Brown*, 2003 BCCA 105. In that case, a great many applications with little possibility of success had been made. A similar situation existed in *Houweling*. I noted in *Houweling* at para. 17: A court has a duty to protect its own procedure to prevent the litigation process from being debased and used in a vexatious manner. Such orders do not prevent a litigant from having his or her day in court but they do ensure that before proceedings are taken, leave of a judge must first be obtained. The interests of justice require such orders here Given the history of matters here, I consider that I should make an order that no further proceedings in this Court may be filed by the applicant without leave first obtained from a justice of the Court in chambers. Such an order is requisite to prevent misuse of the litigation process.

- [12] The order requires Mr. Hutton to seek leave before bringing any further proceedings in this Court. In his oral submissions, Mr. Hutton confirmed that his present application was for leave, as required by April 15, 2010, order. In support of the application, Mr. Hutton filed affidavits sworn October 24, 2012, and October 30, 2010.
- [13] Mr. Hutton also seeks an order for indigent status in all three matters.
- [14] Pursuant to Rule 56 of the Court of Appeal Rules, B.C. Reg. 297/2001, this Court may grant indigent status unless the sitting justice concludes that the applicant's position:
- a) lacks merit,
 - b) is scandalous, frivolous or vexatious, or
 - c) is otherwise an abuse of process of the court.
- [15] Thus, in order to succeed on his applications, Mr. Hutton must satisfy this Court that his applications are meritorious.
- [16] I understand that Mr. Hutton said he wishes to obtain the "paperwork connected to the probate of his grandfather's estate". He also said he wishes to pursue his claim for \$40,000 that was paid into court in Manitoba (which I understand to be related to the judgment of Justice Boyd in action number A932373), and he seeks the contents of certain safety deposit boxes.
- [17] The affidavits filed in support of today's application and Mr. Hutton's submissions do not reveal any legal basis on which to reopen these matters - even if there was jurisdiction to do so.
- [18] I would dismiss the applications. There is no merit to Mr. Hutton's current applications. These three matters were finally resolved long ago, and there is no basis upon which they could be reopened.

Disposition

- [19] The applications are dismissed. I direct the registrar to prepare the orders dismissing these applications for my signature. "The Honourable Madam Justice Garson"

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