

CANADA / JUDGMENT

Coad v. Lariviere

2023 BCCA 458

COURT

British Columbia Court of Appeal

DECIDED

8 December 2023

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2023 BCCA 458 Coad v. Lariviere COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Coad v. Lariviere, 2023 BCCA 458 Date: 20231208 Dockets: CA46477; CA46478 CA46479 Docket: CA46477 In the Matter of the Estate of Barbara Louise Lariviere, Deceased Between: Sasha Jan Coad Appellant (Applicant) And Kenneth Lariviere and Olga Kathleen Phillips by her litigation guardian, Dianne Kathleen Phillips Respondents (Respondents)

- and - Docket: CA46478 Between: Sasha Jan Coad Appellant (Petitioner) And Kenneth Lariviere and Olga Kathleen Phillips by her litigation guardian, Dianne Kathleen Phillips Respondents (Respondents)
- and - Docket: CA46479 Between: Sasha Jan Coad Appellant (Respondent) And Kenneth Lariviere and Olga Kathleen Phillips by her litigation guardian, Dianne Kathleen Phillips Respondents (Petitioners) Before: The Honourable Madam Justice Saunders The Honourable Madam Justice Bennett The Honourable Justice Griffin Second Supplementary Reasons to Coad v. Lariviere, 2022 BCCA 222 and 2022 BCCA 250, Vancouver Dockets CA46477; CA46478 and CA46479. The Appellant, appearing in person: S.J. Coad Counsel for the Respondent, Dianne Kathleen Phillips, in her Capacity as the Administrator of the Estate of Barbara Louise Lariviere: D.A. Hunter C.D. Rodocker Counsel for the Respondent, MD Private Trust Company, in its Capacity as executor of the will of Olga Kathleen Phillips: R.D. Lee Place and Date of Hearing: Vancouver, British Columbia November 9, 2021 Place and Date of Judgment: Vancouver, British Columbia June 24, 2022 Written Submission Received on behalf of the Appellant: November 15, 2023 Date of Second Supplementary Reasons: December 8, 2023 Second Supplementary Reasons of the Court Summary: The appellant filed a notice of motion seeking to reopen his appeal with respect to decisions on costs and damages after the order was already entered. Held: Motion dismissed. Assuming this Court has a narrow jurisdiction to reopen an appeal after the order is entered, the appellant has not met any possible threshold. The appellant advances first instance claims which can only be pursued as a new action in the trial court. Second Supplementary Reasons for Judgment of the Court:

- [1] In reasons indexed at 2022 BCCA 222, this Court found that Sasha Coad was in a marriage-like relationship with the deceased, Barbara Lariviere, contrary to the conclusion of the trial judge. In awarding Ms. Lariviere's estate to Mr. Coad as a result of an intestacy, we also affirmed the post-trial appointment of Ms. Lariviere's sister, Dr. Dianne Phillips, as the Administrator of the estate ("the Administrator").
- [2] In subsequent submissions, Mr. Coad sought special costs and punitive damages relating to alleged abusive conduct of the Administrator.
- [3] We did not accept the submissions regarding damages. We concluded that there was no evidence on the record before us of any fraud, misrepresentation, or undue influence on the part of the Administrator. We affirmed, on the record before us, that Dr. Phillips acted in the best interests of the estate. As a result, we did not change our initial cost order, but clarified that Mr. Coad would receive his trial costs, appeal costs and costs for supplementary submissions on an indemnity basis from the estate. Dr. Phillips did not participate in the trial (nor did her mother, Olga Phillips, now deceased, who was found, at trial, to be the beneficiary of the estate). Dr. Phillips was awarded her costs as the Administrator for the appeal and supplementary submissions on an indemnity basis from the estate. Mrs. O. Phillips' estate did not seek costs. Those reasons are indexed at 2022 BCCA 350.
- [4] The final order was signed and entered on 19 April 2023.
- [5] On 10 October 2023, Mr. Coad wrote to the Registrar indicating a desire to reopen the appeal on the basis that he had received access to a substantial number of documents on 16 May 2023 that, in his submission, altered the finding that Dr. Phillips acted in the best interests of the estate.
- [6] On 11 October 2023, the Court of Appeal Registrar forwarded a letter to Mr. Coad indicating the following: I have received Mr. Coad's letter of 10 October 2023. The Court would invite Mr. Coad to file his notice of motion seeking to re-open the appeal and a short written argument in support that does not exceed six (6) pages. The argument should succinctly outline the basis upon which he seeks to have the appeal re-opened, summarizing the fresh or new evidence he proposes to adduce. The jurisdiction to re-open an appeal is one that is exercised with great caution given the extraordinary nature of such a request. Accordingly, at this time, the Court does not require any written reply from the respondents.
- [7] Having heard nothing further from Mr. Coad, on 8 November 2023, the division of the Court that heard the appeal advised Mr. Coad, via the Registrar, that his request to reopen must be denied. The memo stated: We say this because the formal order was entered (on April 19, 2022 [sic]), rendering the court functus officio. In other words, the appeal is finished. Further, the remedy Mr. Coad seeks does not lie in this court in any event; Mr. Coad cannot delve factually into the conduct of the Administrator for the first time in this court. Such an enquiry is beyond our role as an appellate court. Accordingly, Mr. Coad's request is denied, bringing this matter to a final conclusion.

- [8] Coincidentally, on 8 November 2023, Mr. Coad wrote to the Registrar advising that he wanted to adjourn a pre-hearing conference in relation to the assessment of costs as he was awaiting a response from the Court with respect to his 10 October letter. Subsequent email exchanges revealed that the 11 October letter from the Registrar had been directed into Mr. Coad's spam folder. As a result, the Court advised the Registrar, who advised Mr. Coad, that we would receive his Notice of Motion.
- [9] Mr. Coad filed his Notice of Motion on 15 November 2023. He submits he received new documents after the Order was entered in April. He says that these documents show that the Administrator and her brother deceived the trial court. Furthermore, Mr. Coad says the documents show that the Administrator failed to protect the assets of the Estate and frivolously opposed his appeal because of a vendetta she and her brother had against him.

Legal Framework

- [10] Generally, neither a trial nor an appeal may be reopened once the final order is entered. As stated in *Harrison v Harrison*, 2007 BCCA 120 at para. 29: Once an order has been entered, however, the court which made the order is functus officio with respect to the issues therein: *Piyaratana Unnanse et al v. Wahareke Sonuttara Unnanse et al*, [1950] 2 W.W.R. 796 (P.C.). Once the judge is functus, the power to re-visit an order is much narrower. Generally speaking, that power is confined to making corrections or amendments in two situations: first, under Rule 41(24) of the Supreme Court Rules where there has been a 'slip' in drawing up the order or where a matter should have been but was not adjudicated upon; and second, where there has been an error in expressing the manifest intention of the court: *Buschau v. Rogers Communications Inc.*, 2004 BCCA 142; see also *Chandler v. Alberta Association of Architects*, [1989] 2 S.C.R. 848.
- [11] Mr. Coad relies on several decisions, including *Grewal v. Grewal*, 2016 BCCA 237 and *671122 Ontario Ltd. v. Sagaz Industries Canada Inc.*, 2001 SCC 59. However, both of those decisions set out the test for reopening a trial decision before the formal order was entered. Those cases have no application here.
- [12] The decision in *Long v. Red Branch Investments Limited*, 2018 BCCA 115 has more application. That decision refers to an application to reopen an appeal. It is not clear if the order was entered. In *Long*, the appellants applied to reopen the appeal and adduce fresh evidence of fraud, found in the solicitor's brief after the appeal was dismissed.
- [13] The Court reviewed the law at length. It cited the jurisprudence in Ontario, Yukon and British Columbia, that has held that once an order is entered, an appellate court is functus officio: see *R. v. Hummel*, 2003 YKCA 4 at para. 10: It has been definitively determined both in Ontario: *R. v. H. (E.F.)*; *R. v. Rhingo* (1997), 1997 CanLII 418 (ON CA), 115 C.C.C. (3d) 89 (Ont. C.A.) and in British Columbia: *R. v. Garcha*, 2000 BCCA 550, that if the appeal has been heard on the merits and judgment has been entered, the Court of Appeal has no power to reopen an appeal. In *Garcha* the Court said at ¶9: We are all of the view that, in the

circumstances of this case, when the conviction appeal was heard and dismissed on the merits and the order dismissing the appeal has been entered, this Court does not have jurisdiction to re-open the appeal.

- [11] The court is functus officio on the entry of the judgment but not at the time reasons are issued: Rhingo, footnote 10 at p. 106.
- [14] In Hummel, the Court in obiter dicta identified a possible exception, at para. 12: In obiter dicta, Esson J.A. preferred not to close the door upon the entry of judgment if refusing to open would result in a miscarriage of justice. He said in R. v. R.F. 2000 BCCA 139 at ¶5: ¶5 The Crown's submission that there is no jurisdiction is based on four cases: Menzies v. Harlos (1989), 1989 CanLII 2760 (BC CA), 37 B.C.L.R. (2d) 249 (B.C.C.A.); R. v. Henry (I.W.M.) (1997), 1997 CanLII 3139 (BC CA), 100 B.C.A.C. 183; R. v. Hanna, Unreported, November 24, 1998, Vancouver Registry #CA013877; Regina v. H.(E.F.); Regina v. Rhingo (1997), 1997 CanLII 418 (ON CA), 115 C.C.C. (3d) 89 (Ont. C.A.). There is no case which clearly holds that there is jurisdiction to hold a re-hearing after entry of judgment where there has been a hearing on the merits. Nevertheless, having regard to the circumstances of this case and speaking only for myself, I think it unlikely that we would not hold that we have jurisdiction to conduct a re-hearing if persuaded that there is a significant risk of a miscarriage of justice attributable to a misapprehension by the court of the evidence and findings. [Emphasis added.]
- [13] Esson J.A. could not find a valid ground for a re-hearing and so in the end, he did not decide the issue of jurisdiction.
- [15] In Long, the Court concluded that the issues required a return to the trial court to assess whether the decision was taken on a false premise (at para. 58). It did not reopen the appeal to consider the new issues.
- [16] We do not foreclose, without deciding, that there may be an inherent jurisdiction to reopen an appeal after an order is entered in addition to the bases in Harrison, where there has been a fraud upon the court, or a miscarriage of justice. In our view, and in the context of this case, that is not the evidence here.
- [17] Mr. Coad seeks to reopen the appeal to demonstrate that Dr. Phillips did not act in the best interests of the estate. However, the evidence he proposes to tender, as stated in his submission, relates to matters over which this Court cannot preside at first instance. Mr. Coad argues that the affidavits of Dr. Phillips and John Phillips that were filed in the trial court are contradictory and that he has new evidence showing that they would "run the estate into the ground" rather than see Mr. Coad receive anything. None of the submissions show that Dr. Phillips indeed "ran the estate into the ground", only that her brother may have wanted her to do that. While the evidence may show animosity towards Mr. Coad (as noted, we have only been provided with submissions and excerpts), it does not show actual misconduct on the part of Dr. Phillips.

- [18] Mr. Coad's present position raises allegations of fraud, abuse of process, breach of a fiduciary duty, and general deception in relation to the administration of the estate. He also appears to seek damages for pain and suffering and loss of income. Proceeding with his case in the court would require affidavits and likely cross-examination on affidavits, and would require this Court to engage in a first instance fact-finding process. This Court is ill-equipped to undertake such a process.
- [19] In our view, even if this Court has a narrow jurisdiction to reopen an appeal after the order is entered, as in *Hummel* we do not decide this question, Mr. Coad has not met any possible threshold. Assuming the submissions are true, what he has presented does not show that Dr. Phillips did not act in the best interests of the estate and should therefore be denied costs.
- [20] In addition, and perhaps more importantly, Mr. Coad's claims are first instance claims that the estate was depleted because of a vendetta against him. If he indeed wishes to pursue a damages claim, such claims would need to be brought as a new action in the Supreme Court of British Columbia. "The Honourable Madam Justice Saunders" "The Honourable Madam Justice Bennett" "The Honourable Justice Griffin"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/ca/23/04/2023BCCA0458.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/coad-v-lariviere-2023>

Prepared on 27 October 2026 · Esheria