

CANADA / JUDGMENT

## Curic v. Rainbow's End Housing Co-operative

2021 BCCA 380

COURT

British Columbia Court of Appeal

DECIDED

6 October 2021

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2021 BCCA 380 Curic v. Rainbow's End Housing Co-operative

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Curic v. Rainbow's End Housing

Co-operative,

2021 BCCA 380

Date: 20211006

Docket: CA46074

Between:

Zdravka Curic

Appellant

(Plaintiff)

And

Rainbow's End Housing Co-operative

Respondent

(Defendant)

Before:

The Honourable Madam Justice Fenlon

The Honourable Mr. Justice Fitch

The Honourable Madam Justice Griffin

On an application to vary: An Order of the Court of Appeal for British Columbia,

dated May 5, 2021 (Curic v. Rainbow's End Housing Co-operative,

Vancouver Docket CA46074).

Oral Reasons for Judgment

The Appellant, appearing in person:

Z. Curic

Counsel for the Respondent:

C. Cash

Place and Date of Hearing:

Vancouver, British Columbia

October 6, 2021

Place and Date of Judgment:

Vancouver, British Columbia

October 6, 2021

Summary:

The appellant applies to vary the order of a judge in Chambers, which dismissed her application for an order that her appeal be removed from the inactive list. The respondent applies for what is known as a vexatious litigant order, prohibiting the appellant from bringing further proceedings against the respondent in this Court. Held: appellant's application dismissed; respondent's application granted. At the root of this proceeding is the appellant's wish to challenge a decision of a Supreme Court judge made on August 9, 2012, evicting her from the respondent. The appellant has been unsuccessful in this regard in previous proceedings and is seeking to re-litigate issues that she lost. The judge in Chambers made no error in concluding that it was not in the interests of justice to reactivate the appeal, given the long delay in prosecuting the appeal and the lack of merit to the appeal. The circumstances support a vexatious litigant order.

[1] GRIFFIN J.A.: The appellant, Ms. Curic, brings an application under s. 9(6) of the Court of Appeal Act, R.S.B.C. 1996, c. 77 [Act], to discharge or vary the order of Justice Dickson made May 5, 2021. That order dismissed the appellant's application for an order that her appeal be removed from the inactive list.

- [2] The respondent applies pursuant to s. 29 of the Act for an order that the appellant must not bring or commence any further proceedings against the respondent in the Court without leave of a justice. The respondent submits that the appellant has habitually, persistently and without reasonable cause, commenced vexatious proceedings in the Court.
- [3] The underlying appeal proceeding is brought from a decision of Justice Ball made more than two years ago, on May 1, 2019, indexed at 2019 BCSC 672.
- [4] However, the background starts with Ms. Curic's eviction from the respondent in 2012. On August 9, 2012, Justice Pearlman made an order that she give vacant possession. It is clear that in this proceeding Ms. Curic seeks to challenge Justice Pearlman's decision, despite the history of the litigation. That history is revealed in the reasons of Justice Dickson as follows:
- [3] Ms. Curic sought a review of the eviction which was dismissed (the "First Proceeding"). She appealed that decision to this Court and applied for a no fees order. The no fees order was denied on the basis that the appeal lacked merit. Ms. Curic took no further action with respect to that appeal and, on April 15, 2014, it was dismissed as abandoned.
- [4] On August 9, 2018, Ms. Curic commenced proceedings which sought the same relief as was sought in the First Proceeding. On November 5, 2018, in chambers Master Baker dismissed this second claim because it was barred by the applicable limitation period and because the issues had already been decided and could not be reheard. Ms. Curic appealed the chambers decision to the Supreme Court of British Columbia. On May 1, 2019, Justice Ball dismissed the appeal: 2019 BCSC 672.
- [5] When Justice Ball dismissed Ms. Curic's appeal, he said this:
- [31] Based on a complete review of the facts heard by Master Baker, it is clear that the proceedings before him disclosed no reasonable claim with any possibility of success. His decision, pursuant to Rule 9-5(1)(b) and (d) and Rule 9-6 of the Rules, was clearly correct. Further, the claims in the amended notice of civil claim were barred by delay pursuant to the Limitation Act, R.S.B.C. 1996, c. 266, s. 3(2), the version of the Act in force when the events which gave rise to the action occurred. On the facts of this case, this Court is unable to accede to the submission of the plaintiff that the Limitation Act does not apply to "victims".
- [6] On May 9, 2019, Ms. Curic filed a notice of appeal of Justice Ball's order dismissing her appeal of Master Baker's order. On May 17, 2019, Justice Willcock heard her no fees application in connection with the appeal. At that application, Ms. Curic indicated that she intended to argue that: a) she had not had an opportunity to advance her case before Master Baker fully; b) Master Baker had been impolite to her and not listened to the submissions she wished to make; and c) the eviction occurred as a result of discrimination against her. She also indicated to Justice Willcock that she intended to continue to pursue her claim as long as she could, despite the fact that it had been dismissed once in the past.

- [7] Justice Willcock dismissed Ms. Curic's no fees application. He was satisfied that Ms. Curic could not pay fees without experiencing financial hardship, but he refused the application on the basis that the appeal clearly lacked merit.
- [8] Ms. Curic applied to review Justice Willcock's order. On October 1, 2019, a division of this Court dismissed the review application on the basis there was no legal error or misapprehension of the facts that would warrant intervention: 2019 BCCA 340.
- [9] On January 8, 2021, the Court's registry sent Ms. Curic a letter advising her that, pursuant to s. 25(1) of the Court of Appeal Act, R.S.B.C. 1996, c. 77, the appeal had been placed on the inactive appeal list. The letter instructed that Ms. Curic could apply to a judge in chambers to have the matter removed from the inactive list and instructed that if no steps were taken, the appeal would stand dismissed as abandoned pursuant to s. 25(5).
- [10] On April 26, 2021, Ms. Curic filed a notice of motion to remove her appeal from the inactive list. In support of her motion, Ms. Curic filed an affidavit. In her affidavit, she states:

I am a victim and expressing my right, there are many mistakes at court documents no objection, misunderstanding facts, ignoring essential evidence, violation of the human right abuse, DISCRIMINATION!

- [5] Justice Dickson instructed herself on the legal framework that applies to an appellant's application to have their appeal removed from the inactive list. She noted that:
- a) the application for removal from the inactive list may be brought pursuant to s. 25(2) of the Act;
  - a) the applicant bears the onus of establishing good reason: *Galiano Conservancy Association v. British Columbia (Ministry of Transportation and Highways)* (1997), 40 B.C.L.R. (3d) 171 at 176 (Chambers);
  - b) The overriding consideration is the interests of justice, but factors that are relevant include:
    - i. The extent of the delay,
    - ii. The explanation for the delay,
    - iii. The existence of any prejudice arising from the delay, and
    - iv. The likelihood of success on appeal
- Kar Recovery, Ltd. v. KDA*, 2004 BCCA 503 (Chambers);
- c) self-represented litigants may be given some lenience in respect of form and procedure, but must still have an acceptable explanation for the delay and provide a good reason for reactivating the appeal: *Berg v. Berg*, 2000 BCCA 574 at para. 19 (Chambers); *Faro (Town) v. Knapp*, 2012 YKCA 13 at para. 52 (Chambers).

- [6] Applying these factors, Justice Dickson concluded that it was not in the interests of justice to reactivate the appeal. Ms. Curic had not provided a satisfactory explanation for the long delay and there is no merit to the appeal. Justice Dickson held:
- [17] Ms. Curic has not explained why she has not taken any steps to prosecute her appeal since her review application was dismissed in the fall of 2019. Over a year passed before the appeal was moved to the inactive list, she was notified the appeal was moved to the inactive list in early January 2021 and she then waited for three more months to apply to remove the appeal from the inactive list. Although I have asked Ms. Curic repeatedly for an explanation, none of this delay has been explained.
- [18] Additionally, and importantly, I am unable to detect any merit to the appeal. As Justice Willcock found, Ms. Curic wishes to pursue a claim related to her 2012 eviction despite the fact that the claim has been dismissed once already and it is statute-barred. Justice Willcock determined there was no merit to the appeal and a division of this Court found no legal error or misapprehension of the facts that could warrant intervention in his decision: 2019 BCCA 340 at paras. 16-17. Ms. Curic has not indicated that she intends to argue some ground or issue other than those she has already articulated to Justice Willcock and I agree with him that there is no merit to this appeal.
- [7] On a review of a decision of a judge in chambers, this Court's role is limited. The applicant must establish there has been an error in principle, the judge was wrong in the legal sense, the judge misconceived the facts, or relevant information was not brought to the judge's attention: *Animal Welfare International Inc. v. W3 International Media Ltd.*, 2015 BCCA 148 at para. 9.
- [8] I am unable to find any fault in the reasoning of Justice Dickson, and would dismiss the review application.
- [9] I turn to the respondent's application to obtain an order known as a vexatious litigant order.
- [10] The history of Ms. Curic's litigation against the respondent is summarized in Justice Dickson's reasons, as set out above.
- [11] The power of this Court to order that a person not be permitted to bring proceedings without leave of a justice is found in s. 29 of the Act. The applicable legal principles were recently summarized in *Jacques v. Muir*, 2021 BCCA 363, as follows:
- [12] Various judgments from this Court have outlined the meaning and purpose of vexatious litigant orders. For example, *Carten v. Carten*, 2015 BCCA 201 reads:
- [30] Saunders J.A. described the meaning of the word "vexatious" as follows in *T.J.H. v. C.C.H.*, 2003 BCCA 277 (in Chambers) at para. 16:

The word "vexatious" used in s. 29 describes proceedings that ought not to be brought, it does not describe the personality of the litigant. It is a word used to indicate a quality to the substance of the case that persuades one the court system should not be burdened with the case. It includes cases in which an issue has already been determined by a court of competent jurisdiction.

- [31] Evidence of vexatious conduct in lower courts is not sufficient for an order under s. 29. The applicant in a s. 29 order must show "a pattern of persistent vexatious proceedings in the Court of Appeal": *Koch v. Mitchell*, 1999 BCCA 16 (Donald J.A. in Chambers), cited in *Extra Gift Exchange Inc. v. Ernest & Twins Ventures (PP) Ltd.*, 2014 BCCA 228 (Garson J.A. in Chambers) at para. 34. In general, the existence of multiple proceedings at the Court of Appeal is necessary to warrant a s. 29 order (*Extra Gift* at para. 34). This Court may, however, inform its conclusion by examining the litigant's conduct in the courts below (*Extra Gift* at para. 37).
- [13] Further, in *Gonzalez v. British Columbia (Attorney General)*, 2018 BCCA 421, this Court commented:
- [20] An order under s. 29 of the Court of Appeal Act is not one that should be made lightly, but it is an order that is, in certain circumstances, in the public interest and necessary to prevent an ongoing abuse of the Court's process.
- [21] The purpose of s. 29 is to allow the Court to control its own process "to prevent the abuse of that process by a litigant repetitively bringing unmeritorious proceedings that result in the needless expenditure of judicial resources and cause unnecessary expense to other parties": see *Houweling Nurseries Ltd. v. Houweling*, 2010 BCCA 315 at paras. 1 and 40; *Dawson v. Dawson*, 2014 BCCA 44 at para. 17.
- [14] To assist in assessing whether a party's conduct rises to the level warranting a vexatious litigant order, many cases cite a list of factors first adopted by this Court in *Lindsay v. Canada (Attorney General)*, 2005 BCCA 594:
- [25] The respondents urged on us the summary provided by Henry J. in *Re Lang Michener et al. and Fabian et al.* (1987), 37 D.L.R. (4th) 685 at 691, 59 O.R. (2d) 353 (H.C.J.):

From these decisions the following principles may be extracted:

- (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.
- [12] Ms. Curic has filed materials in response to the respondent's application. In response to her materials, the respondent submits:

The Appellant has consistently rolled forward and repeated her allegations and issues, while adding new claims, some of which are unknown to law (such as a claim for damages for trauma to her cat). This is evidenced by the Appellant's [Reply] Book where she provides a narrative setting out her version of past events. The Appellant's [Reply] Book contains a number of scandalous, baseless allegations against the Respondent and its legal counsel.

The BC Supreme Court and this Court have consistently dismissed her claims in the Original Action, the Second Action and her four related applications on appeal.

The Appellant has consistently sought to appeal the dismissal of her claims in the Original Action, the Second Action and her related applications on appeal. Despite ample opportunity, the Appellant has not pursued either of her appeals and has had each and every application dismissed on the basis that there is no merit or basis to her appeal. This has been inconvenient and expensive for the Respondent, which is entitled to a resolution of this matter after more than nine years.

- [13] The respondent's characterization of the history of this litigation is a fair characterization. It strikes me from the materials filed by Ms. Curic that she may sincerely believe she suffered an injustice years ago when she was evicted from the housing co-op, but she should also well understand that the issues have been litigated and she lost and that litigation has come to an end. Repetitive litigation wastes scarce judicial resources. Where such conduct remains unchecked, it can have the effect of undermining respect for the courts and thus may negatively impact the administration of justice.
- [14] I am satisfied based on the history of the proceeding in this Court that Ms. Curic meets the definition of a vexatious litigant.

- [15] I would conclude that this is an appropriate case for an order pursuant to s. 29 that she must not bring or commence any further proceedings against the respondent in this Court without leave of a justice, which may be determined summarily on written submissions.
- [16] Ms. Curic, if you are named a respondent in any applications brought in this Court by Rainbow's End, you may file documents in answer to those applications. The order prevents you from initiating proceedings in this Court, not responding to them.
- [17] I would also dispense with Ms. Curic's signature on the form of the order.
- [18] FENLON J.A.: I agree.
- [19] FITCH J.A.: I agree.
- [20] FENLON J.A.: The application to vary the order of Justice Dickson is dismissed. Ms. Curic is prohibited from bringing proceedings in this Court without leave of a justice, which may be determined summarily on written submissions. Ms. Curic's signature on the form of the order is dispensed with.

"The Honourable Madam Justice Griffin"

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