

CANADA / JUDGMENT

Dick v. Coquitlam (City)

2023 BCCA 261

COURT

British Columbia Court of Appeal

DECIDED

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2023 BCCA 261 Dick v. Coquitlam (City) COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Dick v. Coquitlam (City), 2023 BCCA 261 Date: 20230606 Dockets: CA49053, CA49056 Docket: CA49053 Between: Rodney Daniel Dick and 611481 B.C. Ltd. Appellants (Plaintiffs) And City of Coquitlam Respondent (Defendant)

- and - Docket: CA49056 Between: Rodney Daniel Dick and R.D. Backhoe Services Inc. Appellants (Plaintiffs) And Vancouver City Savings Credit Union, City of Port Coquitlam, Surinder K. Hundal, Harinder S. Hundal, Corporation of the District of Maple Ridge, Janet Diane Kirkpatrick, Dave Telep, Lisa Telep, Damax Consultants Ltd., David Lard Respondents (Defendants) Corrected Judgment: The text of the judgment was corrected in the summary and at paragraph 32 on June 27, 2023, and on the cover page on July 6, 2023. Before: The Honourable Justice Griffin (In Chambers) On appeal from: Orders of the Supreme Court of British Columbia, dated August 14, 2006 and February 21, 2007 (Dick v. Vancouver City Savings Credit Union, New Westminster Docket S89831), and September 1, 2011 (Dick v. Coquitlam (City), New Westminster Docket S128222). Oral Reasons for Judgment The Appellant, appearing in person and on behalf of 611481 B.C. Ltd. and R.D. Backhoe Services Inc.: R.D. Dick Counsel for the Respondents, City of Coquitlam, City of Port Coquitlam and Corporation of the District of Maple Ridge: K.A. McGoldrick Counsel for the Respondent, Vancouver City Savings Credit Union: L.A. Whittaker Place and Date of Hearing: Vancouver, British Columbia June 6, 2023 Place and Date of Judgment: Vancouver, British Columbia June 6, 2023 Summary: The applicants bring applications for extensions of time to appeal orders in two proceedings. Held: Applications dismissed and vexatious litigant order made. The applications stem from matters that have been extensively and repeatedly litigated over many years.

- [1] GRIFFIN J.A.: There are two applications before me. The first, filed by Rodney Dick and R.D. Backhoe Services Inc. ("R.D. Backhoe"), seeks an extension of time to appeal orders made by Justice Crawford in 2006 and 2007. This is in CA49056.
- [2] The second, filed by Mr. Dick and 611481 B.C. Ltd., seeks an extension of time to appeal an order made by Justice Crawford in September 2011. This is in CA49053.

- [3] Both of these applications stem from matters that have been extensively and repeatedly litigated by Mr. Dick over many years. CA49056
- [4] By way of background, the first application (CA49056) relates to a foreclosure proceeding initiated by Vancouver City Savings Credit Union ("VanCity") in October 1998 against Mr. Dick and his company, R.D. Backhoe. The mortgage had been granted to VanCity by Mr. Dick and R.D. Backhoe as mortgagors over lands in Port Coquitlam and Maple Ridge that they wanted to develop. Mr. Dick and R.D. Backhoe were found to have defaulted under the mortgage and an order nisi of foreclosure was granted by Master Patterson on October 26, 1998. An order for conduct of sale was later made in the same proceeding.
- [5] After the foreclosure, Mr. Dick and his company R.D. Backhoe commenced a number of actions against VanCity and others.
- [6] Mr. Dick has made repeated attempts to litigate the same issues, all without success.
- [7] I do not intend to review the full history, as it has been done so many times by various courts, including this Court. I will simply list a brief chronology which is non-exhaustive in that it does not include all of the proceedings: · October 26, 1998: Master Patterson made the order nisi of foreclosure in the VanCity proceeding. · October 1999: The order approving the sale was made in the foreclosure proceeding. Mr. Dick did not appeal the order approving sale until he attempted to do so in 2009 (this was dismissed by Justice Voith, as he then was, on Sept. 3, 2010). · December 2004: Mr. Dick and R.D. Backhoe commenced a second action against VanCity and others (an earlier action they started in 2001 was discontinued). · March 21, 2005: Master Groves dismissed the appellants' claims against VanCity in the second action, under Rule 19(24)(d) as res judicata: 2005 BCSC 397. · August 14, 2006: Justice Crawford dismissed an application for leave to appeal the order of Master Groves: 2006 BCSC 1346. · September 22, 2006: A third action was commenced by Mr. Dick and R.D. Backhoe against VanCity. · February 20, 2007: Justice Gray struck the third action and made a vexatious litigant order prohibiting the plaintiffs from initiating any other legal proceedings against VanCity or related parties without leave of the court: 2007 BCSC 1419. · February 21, 2007: Justice Crawford dismissed the appellants' claims for judgment against VanCity brought in the second action. · September 19, 2007: This Court dismissed an appeal of Gray J.'s orders: 2007 BCCA 454. · September 3, 2010: Justice Voith dismissed an application for leave to set aside order nisi by Master Patterson. · April 5, 2011: Justice Ryan denied an extension of time to file the appeal record in the appeal of Voith J.: 2011 BCCA 159. · February 16, 2012: This Court denied application to vary the order of Ryan J.A.: 2012 BCCA 79. · October 7, 2013: This Court denied an application to vary order of Justice Harris for security for costs: 2013 BCCA 438. · July 22, 2016: Justice Devlin dismissed an application to set aside order nisi. · March 23, 2017: This Court dismissed an appeal from Devlin J.: 2017 BCCA 140. · September 24, 2020: Justice Groves dismissed an application to file materials in support of an application for leave to set aside order nisi, order of Master Groves and order of Crawford J. · April 29, 2021: This Court dismissed the appeal of Groves J.: 2021 BCCA 186.

- [8] I have discretion under s. 32 of the Court of Appeal Act to grant an extension of time to appeal. The criteria I am to consider are well established in *Davies v. CIBC*, (1987) 15 B.C.L.R. (2d) 256 (C.A.) at 259-60.
- [9] Mr. Dick's objective in launching yet again another appeal is to have the orders of Crawford J. set aside and to allow him to apply in the B.C. Supreme Court to set aside the order nisi granted by Master Patterson in 1998. There is no merit in this appeal and it is doomed to fail. The history of this proceeding also shows that it is clearly not in the interest of justice to grant an extension of time for this appeal. Far too many years have passed since the orders in question were made and Mr. Dick has unsuccessfully sought over all those years to litigate and relitigate the same issues.
- [10] I therefore dismiss his application. As requested by the respondent parties, I dispense with the requirement for the applicants' signature on the form of order. CA49053
- [11] The second application (CA49053) relates to claims arising from the City of Coquitlam's refusal over many years to issue permits to Mr. Dick regarding the development of property he purchased in 2003. In 2011, Mr. Dick commenced an action against the City seeking compensation for delays and other damages as well as the issuance of a soil removal permit. The order of Justice Crawford that he now seeks to appeal was made September 1, 2011 dismissing his application for summary judgment pursuant to Rule 9-6. The judge did so on the basis that there were facts in dispute and he directed that the matter go back before him under Rule 9-7 as a summary trial.
- [12] The City did apply under Rule 9-7 to dismiss the claim and this went before Justice Truscott in December 2012 and February 2013. In reasons for judgment dated September 16, 2013, Truscott J. allowed the application and dismissed the claim: 2013 BCSC 1698. An appeal from that order was dismissed by this Court in 2014: 2014 BCCA 471.
- [13] Clearly there is no point to appealing the order of Crawford J. made September 1, 2011: the merits of the dispute were not determined on that day, but were subsequently determined by way of a separate application, and the appeal from that determination has been dismissed. Equally clearly Mr. Dick did not form the intention to appeal that order in a reasonable time. His correspondence with the City suggests he did not form the intention until almost 12 years after the order was made.
- [14] In 2017, Mr. Dick filed a petition appealing a decision of the City refusing to issue a subdivision permit, which was dismissed: 2017 BCSC 2063. He filed another appeal regarding a subdivision permit that was dismissed: 2017 BCSC 2158. This Court dismissed appeals from both of these decisions: 2018 BCCA 153.
- [15] Subsequently, Mr. Dick was declared a vexatious litigant in the B.C. Supreme Court. He tried yet again to issue a petition regarding the subdivision but leave was refused: 2018 BCSC 1836.

- [16] In his affidavit filed in support of the present application, Mr. Dick focuses on events from 2003 to 2009, which form the genesis of the dispute he continues to pursue. As with the first application, this appeal has no merit and I do not consider it to be in the interests of justice to grant an extension of time.
- [17] This application is also dismissed. I dispense with the requirement for the applicants' signature on the form of order. Vexatious litigant order
- [18] Counsel for VanCity in proceeding CA49056 and counsel for the City of Coquitlam in proceeding CA49053 have urged me to make an order under s. 22 of the Court of Appeal Act declaring Mr. Dick a vexatious litigant.
- [19] Section 22 provides in part: 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.
- [20] The notice requirement and opportunity to make written submissions has been met. In this regard, the Registrar notified Mr. Dick that the Court was contemplating making such an order and sought a written submission from him to be filed in advance of this hearing. He failed to respond in writing.
- [21] The scope of conduct that may be considered in making an order under s. 22 has been expanded from commencing vexatious proceedings in this Court to commencing and continuing such proceedings in any court in B.C.: see s. 29 of the former Court of Appeal Act.
- [22] A non-exhaustive list of principles to consider on the question of a vexatious litigant order was summarized in *Re Lang Michener et al. and Fabian et al.* (1987), 37 D.L.R. (4th) 685 (Ont. H.C.J.), which have been applied in this Court: *Holland v. Marshall*, 2010 BCCA 243; and *Pearlman v. ICBC*, 2010 BCCA 362:
- (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.
- [23] Mr. Dick, R.D. Backhoe and 611481 B.C. Ltd. are already subject to a vexatious litigant order in another proceeding in this Court: see *R.D. Backhoe Services Inc. v. Graham Construction and Engineering Inc.*, 2017 BCCA 91. Mr. Dick's conduct in relation to that matter was consistent with the pattern he has shown in the present applications.
- [24] In that case, Justice Harris considered the conduct of Mr. Dick and his companies in this Court, which included his litigation against the respondent VanCity, and was satisfied that a vexatious litigant order was fully justified. He stated:
- [31] The current appeal is wholly without merit. It is an example of his incorrigible tendency to bring proceedings to determine issues which have already been decided in circumstances where it is obvious that the appeal cannot succeed. Moreover, Mr. Dick's conduct in respect of his litigation involving VanCity in the Court reinforces the conclusion that he ignores the most explicit statement that his proceedings are without merit and persists in bringing meritless further proceedings.
- [25] The same reasoning applies here. Mr. Dick continues in his relentless quest to bring the same issues before the court over and over again. He pays no attention to the requirements of the rules or to the principle of finality of litigation.
- [26] I have lost count, but counsel for VanCity submits that this is Mr. Dick's seventh appearance before this Court regarding the same subject matter involving it and the foreclosure, and there are multiple more appearances in the Supreme Court.
- [27] Mr. Dick also seems incapable of appreciating the practical utility (or rather lack of utility) of an appeal, as shown by his attempt to appeal the September 1, 2011 order of Crawford J., CA49053, as I have already described.

- [28] This has to stop. I am satisfied that Mr. Dick and the companies he controls have "habitually, persistently and without reasonable cause" commenced vexatious proceedings in the courts of B.C. I am satisfied therefore that an order under s. 22(1) of the Act is appropriate.
- [29] The question is what should be the scope of that order. Sometimes vexatious litigant orders preclude the vexatious party from bringing proceedings against a certain party or group of parties that they have been targeting with their repetitive litigation. Here, I am of the view that such a limited scope would not go far enough given Mr. Dick's complete lack of self-control and inability to restrain himself from bringing pointless and frivolous appeal proceedings.
- [30] In short, Mr. Dick has proven himself unable to resist abusing the process of the court. He makes very little effort to file sensible and complete documents, initiating applications that then cause others to expend valuable resources trying to make sense of what he is seeking, including resources to review the lengthy and convoluted history of the litigation. This drives up the costs for opposite parties but also wastes very limited public resources devoted to staffing and running the courts, as well as wasting judicial resource. These limited resources end up being spent on his duplicative and frivolous matters, and are then less available to the people who truly need access to justice. These circumstances in my view justify the broad vexatious litigant order envisioned by s. 22.
- [31] I order that Mr. Dick, R.D. Backhoe Services Inc. and 611481 B.C. Ltd., and any company Mr. Dick controls, are prohibited from bringing or continuing an appeal or application for leave to appeal without leave of the court or a justice. Any such application for leave must be in writing and may be determined by a justice without an oral hearing.
- [32] I make the vexatious litigant order in both proceedings although it is not strictly necessary, it would be sufficient to make it in one. I dispense with the requirement that the order be signed by Mr. Dick and related parties. [Discussion with parties re: costs]
- [33] GRIFFIN J.A.: The respondents are entitled to costs on Mr. Dick's applications and in respect of the vexatious litigant application. "The Honourable Justice Griffin"

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