

CANADA / JUDGMENT

Este v. Esteghamat-Ardakani

2020 BCCA 164

COURT

British Columbia Court of Appeal

DECIDED

1 June 2020

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2020 BCCA 164 Este v. Esteghamat-Ardakani COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: Este v. Esteghamat-Ardakani, 2020 BCCA 164 Date: 20200601 Docket: CA46581 Between:

Rosa Donna Este Respondent (Plaintiff, Defendant by Counterclaim) And Mina

Esteghamat-Ardakani Appellant (Defendant, Plaintiff by Counterclaim) Before: The Honourable

Madam Justice Saunders The Honourable Mr. Justice Willcock The Honourable Mr. Justice Butler

On appeal from: An order of the Supreme Court of British Columbia, dated December 10, 2019

(Este v. Esteghamat-Ardakani, 2019 BCSC 2214, Vancouver Docket S151066). In relation to an

application to vary: Orders of the Court of Appeal for British Columbia, dated January 24, 2020

and February 5, 2020 (Este v. Esteghamat-Ardakani, Vancouver Docket CA46581). Oral Reasons for

Judgment Counsel for the Appellant (via videoconference): J.K. McEwan, Q.C. E.A. Kirkpatrick

The Respondent, appearing in person (via videoconference): R.D. Este Place and Date of Hearing:

Vancouver, British Columbia June 1, 2020 Place and Date of Judgment: Vancouver, British

Columbia June 1, 2020 Summary: The applications to review orders of single justices staying the

order appealed pending the hearing of the appeal are dismissed as moot, and a fresh stay of the

order pending pronouncement of judgment on the appeal is ordered, with leave to apply to lift

the stay or reconsider its terms on the same basis as was provided in the earlier orders imposing a stay.

- [1] SAUNDERS J.A.: Today we have heard the appeal from the order of Mr. Justice Giaschi establishing a mandatory interlocutory injunction in respect to construction/rebuilding of the house that formerly was on the property that is in issue between the parties, that property having been the subject of a fire and in respect of which there is a sum of money available through insurance proceeds from an insurance contract, apparently for rebuilding.
- [2] There was a stay in place of the mandatory interlocutory injunction pending the hearing of the appeal. That came about through certain orders of single justices in this court.
- [3] Ms. Este has filed two applications for review; one for review of an order of Mr. Justice Abrioux and the other for review of an order of Madam Justice Garson. We were not in a position to hear those applications for review prior to today's date because of the COVID-19 pandemic which caused this court to adjourn a great many matters. As I was explaining

when we broke from the hearing temporarily, this hearing of the appeal has been offered on one of our first available dates, now that we are up and doing hearings by this new Zoom technology. All of this has meant that the applications for review of the orders of single justices have come on today, the same day set for the hearing of the appeal. The stay, of course, expired on the hearing of the appeal as it was a stay until the appeal be heard.

- [4] That means that the applications for review are moot. We are able to hear moot matters, but we do not often do so. In this case the issue that Ms. Este very much wants to raise is a question of the information that was provided to the chambers judges, the single judges who made the orders, which she said was erroneous. The applications for review will not raise an issue of principle and, my colleagues agreeing, we have determined that we will not hear the applications for review on the basis that the applications are moot.
- [5] That brings us to what we should do now.
- [6] It is common, in such circumstances, for this court to issue a stay of the order appealed until we issue our reasons for judgment. My colleagues will have their own voice on this, but it is my view that a stay should issue until we release our reasons for judgment on the appeal. The stay should be on the same terms as were recited in the last appearance in court and, I believe, also in the orders that were sought to be reviewed. That term, in general, is that should Ms. Este receive information that the moneys that she intends to rely upon for reconstruction of the house are in jeopardy - that the insurance company is trying to bring some finality to the insurance issue - then she may apply to the court to lift the stay, or for us to reconsider the terms on which this matter should be dealt with pending the release of the reasons for judgment. Such an application, though, would need to be based on some concrete information from the insurance company - by way of a letter or e-communication or something of that nature so as to provide some certainty to a court.
- [7] I consider that a stay of the mandatory interlocutory injunction should issue pending the release of our reasons for judgment, provided that Ms. Este is at liberty to apply in the terms that I have indicated.
- [8] WILLCOCK J.A.: I agree.
- [9] BUTLER J.A.: I agree.
- [10] There will be the stay on the terms that I have indicated.
- [11] That is the end of the proceedings today. "The Honourable Madam Justice Saunders"

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