

CANADA / JUDGMENT

Ezrin v. Becker

[1975] 1 SCR 508**COURT**

Supreme Court of Canada

DECIDED

29 April 1974

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Ezrin v. Becker Collection Supreme Court Judgments Date 1974-04-29 Report

[1975] 1 SCR 508 Judges Laskin, Bora; Martland, Ronald; Judson, Wilfred; Spence, Wishart Flett; Dickson, Robert George Brian On appeal from Ontario Subjects Appeal Decision Content Supreme Court of Canada Ezrin v. Becker, [1975] 1 S.C.R. 508 Date: 1974-04-29 Sydney Ezrin Appellant; and Paul Becker Respondent. 1974: April 1; 1974: April 29. Present: Laskin C.J. and Martland, Judson, Spence and Dickson JJ. MOTION TO QUASH Appeal—Status—Motion to quash—Concurrent findings of fact—Supreme Court Act, R.S.C. 1970, c. S-19, s. 36(a), s. 46. The Court of Appeal for Ontario dismissed the appeal by Ezrin and observed that questions of fact only were involved, adding that as Ezrin, by his own admission, was not entitled to the money he could not succeed in any event. Held: The motion to quash should be granted with costs. The appellant Ezrin has no status to pursue the appeal. Furthermore, where an appeal is manifestly devoid of merit or substance, this Court will entertain favourably a motion to quash it. The appellant is asking an opportunity to relitigate his case in this Court or alternatively to set aside concurrent findings of fact by interfering with the ruling on credibility by the trial judge. Neither of these courses is justified by the record. National Life Assurance Co. v. McCoubrey, [1926] S.C.R. 277 followed; Cameron v. Excelsior Life Insurance Co., [1937] 3 D.L.R. 224; Oatway v. Canadian Wheat Board, [1945] S.C.R. 204; Duhamel v. Coutu, [1954] S.C.R. 279 referred to. MOTION TO QUASH appeal from an oral judgment of the Court of Appeal for Ontario dismissing an appeal from Houlden J. at trial. Motion to quash granted with costs. Sydney Ezrin in person, appellant. J.J. Goldenberg, for the respondent. The judgment of the Court was delivered by THE CHIEF JUSTICE—The respondent in this appeal has moved to quash it on three separate grounds. He submits, first, that the appellant, who appeared in person in opposition to the motion to quash, has no status to pursue the appeal. The second submission was that the appeal is entirely without merit, that it has no substance, and should be quashed accordingly. It was contended, in the third place, that the amount in controversy did not exceed \$10,000 and hence the jurisdictional requirement of s. 36(a) of the Supreme Court Act, R.S.C. 1970, c. S-19 was not satisfied. I am of the opinion that the motion to quash should be granted on the first two grounds advanced by the respondent. My reasons follow. The litigation now before this Court arose out of interpleader

proceedings which came before Houlden J. of the Ontario Supreme Court and which were directed to determine entitlement to a bank draft for \$10,000 made out to the respondent by the appellant. The latter was indebted to the respondent under two promissory notes for \$5000 and \$10,000 respectively. The respondent was also second mortgagee of property owned by the appellant's mother-in-law and proposed to enforce his security which had been taken for an advance of \$15,000. Thereupon the mother-in-law, apparently on Ezrin's advice, negotiated a sale of the property to one Maria Fulop under an agreement which called for payment of \$12,000 cash on closing subject to adjustments, and, of course for mortgage refinancing. At the closing, attended by Ezrin on behalf of his mother-in-law, Maria Fulop handed him a cheque for \$11,742.02 which Ezrin deposited in a trust account in his name. The bank draft for \$10,000 was purchased by Ezrin from the proceeds of the Fulop deal. The trial judge found, on conflicting evidence, that the bank draft was turned over to the respondent Becker in full payment on the promissory notes and on Becker's agreement to extend the mortgage. The Fulop transaction had not in fact been completed because Ezrin was unable to meet his undertaking to discharge the three mortgages registered against the property and to pay the tax arrears. Maria Fulop sued for specific performance and damages, and the lawsuit was settled by a mortgage in favour of Maria Fulop given by Ezrin's wife on property she owned. Ezrin's counsel and Ezrin himself in his testimony told Houlden J. that no claim was being made to the bank draft by Ezrin, but rather they claimed it on behalf of Maria Fulop. The basis for this position appeared to be that Ezrin should have held Maria Fulop's cheque in escrow pending the completion of the sale to her and, consequently, there was a trust in her favour. She gave evidence, however, that, having settled her claim, she was not seeking to recover the \$10,000. Houlden J. concluded that Ezrin's testimony that the bank draft was given as payment on Becker's mortgage was not credible and he accepted Becker's version of the events respecting the bank draft. In dismissing Ezrin's appeal in oral reasons, the Ontario Court of Appeal observed that questions of fact only were involved and that Houlden J. had based his judgment on the credibility of the parties. It added that in view of Ezrin's admission that he was not himself entitled to the money, he had no personal stake in the litigation and could not succeed in any event. The formal judgment of Houlden J. in this matter awarded Becker the money paid into Court (the amount of the bank draft) plus accrued interest. It follows that the amount in issue in this appeal is in excess of \$10,000. That does not conclude the matter in favour of Ezrin's assertion of an appeal as of right, even if it be the case that he comes within s. 36(a) of the Supreme Court Act before it was amended by 1969-70 (Can.), c. 44, s. 1 to include as a prerequisite that the appeal be not on a question of fact alone. Section 46 of the Supreme Court Act provides that "the Court may quash proceedings in cases brought before it in which an appeal does not lie, or whenever such proceedings are taken against good faith". In *National Life Assurance Co. v. McCoubrey*[1], this Court said (at p. 283): If an appeal, though within its jurisdiction, be manifestly devoid of merit or substance, this Court will entertain favourably a motion to quash it... as a convenient way of disposing of the appeal before further costs have been incurred. The Court has acted on this principle in a host of cases of which *Cameron v. Excelsior Life*

Insurance Co.[2], Oatway v. Canadian Wheat Board[3], and Duhamel v. Coutu[4] are illustrative. In my opinion, the present case falls within the principle. The would-be appellant, on his submissions, is asking this Court to give him an opportunity to relitigate his case on a basis different from that on which it proceeded before Houlden J. and on appeal, or, alternatively, to set aside concurrent findings of fact by interfering with the ruling on credibility made by Houlden J. Neither of these courses is justified by anything in the record of proceedings. The motion to quash is granted with costs. Motion to quash granted with costs. Sydney Ezrin, appellant in person. Solicitors for the respondent: Goodman A Carr, Toronto.

[1] [1926] S.C.R. 277.

[2] [1937] 3 D.L.R. 224.

[3] [1945] S.C.R. 204.

[4] [1954] S.C.R. 279.

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Prepared on 26 October 2026 · Esheria