

CANADA / JUDGMENT

Ho v. Ho

2016 BCCA 253

COURT

British Columbia Court of Appeal

DECIDED

13 June 2016

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

2016 BCCA 253 Ho v. Ho

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Ho v. Ho,

2016 BCCA 253

Date: 20160613

Docket: CA43421

Between:

Grace Shu-Fang Ho, in her capacity as Executrix of the

Estate of Raymond Chih-Kuang Ho, Deceased

Respondent

(Plaintiff)

And

Paula Ho

Appellant

(Defendant)

Before:

The Honourable Mr. Justice Goepel

(In Chambers)

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

January 4, 2016 (Ho v. Ho, Vancouver Registry Docket S139045).

The Appellant appearing in Person:

P. Ho

Counsel for the Respondent:

I. Giroday

Place and Date of Hearing:

Vancouver, British Columbia

May 20, 2016

Place and Date of Judgment:

Vancouver, British Columbia

June 13, 2016

Summary:

The appellant seeks leave to appeal an order for pre-trial discovery made under Part 7 of the Supreme Court Civil Rules. She also seeks a stay pending the appeal. Held: application for leave to appeal dismissed. The appeal has no reasonable prospect of success. It is not in the interests of justice to grant leave.

Reasons for Judgment of the Honourable Mr. Justice Goepel:

NATURE OF THE APPLICATION

[1] The appellant, Paula Ho, applies for leave to appeal the order of Madam Justice Maisonville, pronounced in chambers on January 4, 2016. Maisonville J. allowed an application by the respondent, Grace Ho, for certain answers and other discovery from the appellant under Rules 7-1(13) and 7-2(22) of the Supreme Court Civil Rules (the "SCCR"). If leave is granted, the appellant also seeks an order that the January 4, 2016 order be stayed pending the determination of the appeal.

BACKGROUND

A. The Parties

[2] The respondent, Grace Ho, is the executor of the estate of Raymond Chi-Kuang Ho (I will hereafter refer to Raymond Chi-Kuang Ho as "Raymond Ho"). Raymond Ho is the respondent's father. He passed away in August 2012.

[3] Prior to his death, Raymond Ho was the executor of his mother-in-law, Mei-Ing Chen's estate. Mei-Ing Chen passed away in July 2008. Following Raymond Ho's death, the respondent also became the executor of Mei-Ing Chen's estate.

[4] The appellant, Paula Ho, is a daughter-in-law of Raymond Ho.

B. The Underlying Action

[5] On December 4, 2013, the respondent filed a notice of civil claim naming the appellant, Paula Ho, as the defendant.

[6] In this underlying action, the respondent alleges that the appellant:

- (a) took the residue of the estate of Mei-Ing Chen for her own benefit and use when the residue should have been paid to the beneficiaries of that estate;
- (b) took the executor's fee paid from the estate of Mei-Ing Chen for her own benefit and use when the fee should have been paid to the executor of that estate, Raymond Ho;
- (c) took an interim distribution from the estate of Mei-Ing Chen in the amount of \$99,000, plus accumulated interest, for her own benefit and use where she was not a beneficiary of that estate and where that distribution was intended for Raymond Ho; and
- (d) received two payments in the total approximate amount of \$60,000 from Raymond Ho that were not intended as gifts to her and which she holds on a resulting trust for his estate.

[7] The respondent pleads the following facts in Part 1 of the notice of civil claim:

- 8. In or about October, 2008 an estate account for the estate of Mei-Ing Chen was opened at TD Canada Trust bearing account number XXXX-XXXX024.
- 9. In or about August, 2009, estate funds from the estate of Mei-Ing Chen in the approximate amount of \$450,000 that had been held in trust by lawyers acting for the said estate were placed into a joint bank account between Mei-Ing Chen and Raymond Ho at TD Canada Trust bearing account number XXXX-XXXXX750-02 notwithstanding that Mei-Ing Chen had been dead for over a year at that time.
- 10. On May 17, 2010, both TD Canada Trust bank account numbers XXXX-XXXX024 and XXXX-XXXXX750-02, referred to in paragraphs 8 and 9 above, were closed and a joint "all-to-sign" TD Canada Trust bank account between the Defendant [Paula Ho] and the Deceased [Raymond Ho], with survivorship, was opened bearing account number XXXX-XXXX023. The estate funds from the estate of Mei-Ing Chen from account number XXXX-XXXX024 in the amount of \$22,118.26 and from account number XXXX-XXXXX750-02 in the amount of \$450,515.96 were transferred or otherwise placed into account number XXXX-XXXX023.

11. On or about August 24, 2010, distributions were made to the beneficiaries of Mei-Ing Chen's estate, including a distribution to the Deceased in the amount of \$99,000, from TD Canada Trust account number XXXX-XXXX023. On the same date that this distribution was made, the \$99,000 distribution made to the Deceased was deposited back into account number XXXX-XXXX023.
 12. Exactly one year later, on or about August 24, 2011, \$99,000 was transferred from account number XXXX-XXXX023 to a TD Canada-Trust joint "all-to-sign" term deposit #XXXX249-01 between the Deceased and the Defendant.
 13. Also on or about August 24, 2010 the Defendant took an executor's fee from account number XXXX-XXXX023 in the amount of \$26,647.40 that she had no right to take. Any executor's fee should have been paid to the executor of the estate, being the Deceased.
 14. In or about March, 2010 and in or about November, 2010 funds owned by the Deceased and held in TD Canada Trust term deposits or bank accounts were transferred to the Defendant, the particulars of which are:
 - (i) account no. XXXX-XXXX955 - \$30,387.76 transferred to the Defendant on March 20, 2010;
 - (ii) account no. XXX-XXXX171-04 - \$1,219.82 to the Defendant on November 2, 2010;
 - (iii) account no. XXXX-XXXX750-01- \$25,506.85 transferred to the Defendant on November 2, 2010; and
 - (iv) account no. XXXX-XXXX023 - \$2,860.83 transferred to the Deceased's account no. XXXX556 and then \$3,273.33 from that account to the Defendant on November 2, 2010.
- None of these amounts were intended as gifts from the Deceased to the Defendant nor were these funds provided to her as consideration for any contract between them. The Defendant holds these amounts in trust for the estate of the Deceased.
15. On or about January 23, 2013, the Defendant withdrew from term deposit account number XXXX249-01 the \$99,000 plus accumulated interest in the total amount of \$100,088.17 that was the Deceased's inheritance from Mei-Ing Chen. The said funds were not intended as a gift from the Deceased to the Defendant and she holds those funds on resulting trust for the estate of the Deceased.
 16. Also on or about January 23, 2013, the Defendant withdrew \$16,752.50 from TD Canada Trust account number XXXX-XXXX023, being the balance of the estate funds from the estate of Mei-Ing Chen. The deceased was the beneficiary of one-quarter of Mei-Ing Chen's estate and accordingly was beneficially entitled to \$4,188.12 of this amount and was entitled to the balance of \$12,750.38 in trust for the other beneficiaries of the estate of Mei-Ing Chen as executor of that estate. The Defendant Paula Ho holds \$16,752.50 in trust for the estate of the Deceased, \$12,750.38 of which is to be further distributed to the other beneficiaries of the estate of Mei-Ing Chen.

C. The Respondent's Application for Discovery (Maisonville J.'s order)

- [8] On December 7, 2015, the respondent filed a notice of application in the Supreme Court seeking an order that the appellant produce her answers to the respondent's request for additional information following an examination for discovery conducted on September 22, 2015. The answers sought were as follows:
1. The Defendant to produce any communication she has in her possession with Eichler Caldwell, with Legacy, with Sugden McFee Roos, with Singleton Urquhart, and with McLellan Herbert having anything to do with the Mei-Ing Chen estate;
 2. The Defendant to produce whatever records she has with respect to any and all joint bank accounts she had with Raymond Ho, and, in particular, a joint account with Raymond Ho at TD Canada Trust, account number XXXX023;
 3. The Defendant to produce her bank statements from account number XXX239/XXXX from August 2010 to present;
 4. The Defendant to produce her banking records for account XXXX249-01 from August 2011 to present;
 5. Further to Request 3, the Defendant to produce her banking records for account XXX239/XXXX showing where the funds were deposited;
 6. The Defendant to produce her banking records for TD Canada Trust account number XXXX275/XXXX in the name of Paula Ho from January 2013 to present;
 7. See previous request 3;
 8. See previous request 6;
 9. [The] Defendant to make inquiries of her husband if he knows what the transfer of [\$]30,387.76 from Raymond Ho to her account on March 20, 2010 was about and to advise accordingly;
 10. The Defendant to produce her banking records for account XXXX-XXXX454 for the period March 2010 to present;
 11. The Defendant to inquire of her husband if he has any knowledge of why Raymond Ho transferred \$30,000 to their joint account on November 2, 2010 and to advise accordingly;
 12. The Defendant to make [inquiries] of her husband as to whether he removed the black [attaché] case, or the contents thereof, from Raymond's apartment after he passed away, and if he did, please return it to counsel on behalf of the executor of Raymond Ho;
 13. The Defendant to check if she or her husband are in possession of any old TD Canada Trust or TD passbooks or HSBC bank statements or passbooks of Raymond Ho's and to return same to counsel for the Plaintiff; and

- [14] The Defendant to check if she or her husband are in possession of any old passbooks or bank statements of Mei-Ing Chen and to return same to counsel for the Plaintiff.
- [9] The respondent's application came on for hearing before Maisonville J. on January 4, 2016. At para. 5 of her reasons, Maisonville J. noted that, having had the opportunity to review the answers sought by the respondent, she was "satisfied that questions 2 to 14 relate to matters in question in this action as set out in the Notice of Civil Claim". She then proceeded to address her specific orders in respect of questions 1 through 14 (at paras. 6-14).
- [10] In the result, Maisonville J. allowed the respondent's application with respect to questions 2 through 14. The application in respect of question 1 was adjourned generally, to allow the parties an opportunity to address potential privilege concerns.

D. The Appellant's Application to Strike (Baker J.'s order)

- [11] On December 15, 2015, the appellant filed a notice of application in the Supreme Court seeking an order that the respondent's claim be struck for disclosing no reasonable cause of action, or being frivolous and vexatious. This application was heard and dismissed by Madam Justice Baker on January 8, 2016.

E. The Maisonville Appeal and the Baker Appeal

- [12] On January 25, 2016, the appellant filed this notice of application for leave to appeal from Maisonville J.'s order (the "Maisonville Appeal"). On the same date, the appellant filed a notice of appeal from Baker J.'s order (the "Baker Appeal"). The Baker Appeal is proceeding as of right.
- [13] On February 24, 2016, the appellant filed an amended notice of application for leave to appeal. This amended notice includes a prayer for an order staying the order of Maisonville J. until this appeal and the Baker Appeal have been decided.

POSITIONS OF THE PARTIES ON THIS APPLICATION

- [14] The appellant has identified the following grounds of appeal in her amended notice of application for leave to appeal:

The judge erred in failing to find that the Plaintiff's Civil Claim has no legal basis, it discloses no reasonable claim, and it is frivolous and vexatious. Furthermore, the Plaintiff has not sworn any evidence in this proceeding.

The judge did not properly interpret and apply law as it relates to the rights, powers, duties and liabilities of the Defendant and the Plaintiff.

The judge erred in her decision and order that the Defendant shall produce documents and answers before the issue of liability and duties of the Defendant has been determined, and by doing so created prejudice to the Defendant.

The judge showed reasonable apprehension of bias during the Hearing for the benefit of the Plaintiff.

- [15] The respondent opposes this application for leave to appeal on the basis that the proposed appeal is not of significance to the practice generally or to the underlying action, and would have a minimal prospect of success if leave is granted.

DISCUSSION

A. Test for leave to appeal

- [16] Orders of a judge of the Supreme Court may be appealed as of right unless they qualify as limited appeal orders. The definition of a limited appeal order is set out in R. 2.1 of the Court of Appeal Rules. This definition includes "an order granting or refusing relief for which provision is made under Part 7" of the SCCR, other than R. 7-7(6). Maisonville J.'s order is clearly an order made under Part 7 of the SCCR and qualifies as a limited appeal order; therefore, leave to appeal is required.
- [17] The test for leave to appeal was set out by Madam Justice Saunders in *Goldman, Sachs & Co. v. Sessions*, 2000 BCCA 326 at para. 10 (in Chambers):
- [10] The criteria for leave to appeal are well known. As stated in *Power Consolidated (China) Pulp Inc. v. B.C. Resources Investment Corp.* (1988), 19 C.P.C. (3d) 396 (C.A.) they include:
- (1) whether the point on appeal is of significance to the practice;
 - (2) whether the point raised is of significance to the action itself;
 - (3) whether the appeal is prima facie meritorious or, on the other hand, whether it is frivolous; and
 - (4) whether the appeal will unduly hinder the progress of the action.
- [18] The party who is seeking leave to appeal bears the onus of establishing that these four conditions have been met: *British Columbia Teachers' Federation v. British Columbia (Attorney General)* (1986), 4 B.C.L.R. (2d) 8 at 11 (C.A.).
- [19] The merits threshold on an application for leave to appeal is relatively low: *Bartram v. Glaxosmithkline Inc.*, 2011 BCCA 539 at para. 16 (Prowse J.A. in Chambers). However, an appeal that is vexatious, frivolous, or has no reasonable chance of success will not meet this threshold: *Gichuru v. Law Society of BC*, 2012 BCCA 159 at para. 22 (Bennett J.A. in Chambers), *aff'd* 2012 BCCA 171.

- [20] The overarching concern on an application for leave is the interests of justice: *Hanlon v. Nanaimo (Regional District)*, 2007 BCCA 538 at para. 2 (Saunders J.A. in Chambers). Even if the applicant has satisfied the four conditions from *Power Consolidated*, leave may be denied if granting leave is not in the interests of justice: *Movassaghi v. Aghtai*, 2010 BCCA 175 at para. 27 (D. Smith J.A. in Chambers).

B. Analysis

- [21] The law concerning the pre-trial production of documents and information is well settled. In my view, the *Maisonville* Appeal does not raise any issues of significance to the practice generally or to the underlying action.
- [22] Having considered the proposed grounds of appeal, I am also of the view that the *Maisonville* Appeal has no reasonable chance of success. The chambers judge had before her a proper evidentiary foundation to make the order under appeal. It cannot be said that she erred in failing to strike the respondent's civil claim. The appellant's application to strike was not before the court on January 4, 2016 (this application to strike was heard and decided by Baker J. on January 8, 2016).
- [23] It also cannot be said that the chambers judge erred in failing to "properly interpret and apply law as it relates to the rights, powers, duties and liabilities of the Defendant and the Plaintiff" - these were issues for trial. Moreover, it cannot be said that she erred in ordering that the appellant produce documents and answers before the issue of liability had been determined - the various procedures for ascertaining facts, including the discovery of documents and the examination of parties, take place in advance of trial. The rules that govern this pre-trial discovery phase are set out in Part 7 of the SCCR. These rules include the obligation on a party, including a defendant, to respond to a demand for additional documents (R. 7-1(12)), and the obligation on a party, including a defendant, to answer any question within his or her knowledge or means of knowledge regarding any non-privileged matter that relates to a matter in question in the action (R. 7-2(18)).
- [24] Finally, I would find that the appellant's allegations that the chambers judge showed a reasonable apprehension of bias are completely unfounded. The appellant has made similar allegations against Baker J. in her factum in the *Baker* Appeal.

CONCLUSION

- [25] The *Maisonville* Appeal has no reasonable chance of success. It is not in the interests of justice to grant leave. The application for leave to appeal is dismissed.
- [26] Having dismissed the application for leave, it is not necessary to consider the appellant's application for a stay of proceedings.

"The Honourable Mr. Justice Goepel"

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/16/02/2016BCCA0253.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/ho-v-ho-2016>

Prepared on 29 October 2026 · Esheria