

CANADA / JUDGMENT

Hoessmann v. Aldergrove Credit Union

2018 BCCA 218

COURT

British Columbia Court of Appeal

DECIDED

31 May 2018

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2018 BCCA 218 Hoessmann v. Aldergrove Credit Union COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Hoessmann v. Aldergrove Credit Union, 2018 BCCA 218 Date: 20180531 Docket: CA45186 Between: Janet Jasmine Hoessmann Appellant (Plaintiff) And Aldergrove Credit Union Respondent (Defendant) Before: The Honourable Madam Justice Newbury The Honourable Madam Justice MacKenzie The Honourable Mr. Justice Harris On appeal from: an order of the Supreme Court of British Columbia, dated February 22, 2018 (Hoessmann v. Aldergrove Credit Union, 2018 BCSC 256, Vancouver Registry No. S134593) Oral Reasons for Judgment Appellant, appearing in person: J.J. Hoessmann No one appearing on behalf of the Respondent: Place and Date of Hearing: Vancouver, British Columbia May 31, 2018 Place and Date of Judgment: Vancouver, British Columbia May 31, 2018 Summary: Vexatious litigant order previously made by this court held to apply to present proceeding.

- [1] NEWBURY J.A.: I note at the outset that we were informed in writing prior to this hearing that the defendant, Aldergrove Credit Union ("ACU"), would not be appearing today. Consequently, we have proceeded to hear only Ms. Hoessmann.
- [2] Ms. Hoessmann applied to a judge in chambers of this court for a "no-fee" order under Rule 38, in her appeal from an order made by Mr. Justice Ball in this proceeding on February 22 of this year. His reasons for judgment are indexed as 2018 BCSC 256. The style of cause originally showed Ms. Hoessmann as executrix of her father's estate, but as Ball J. noted, Ms. Hoessmann was replaced as such in 2013. She appealed that order unsuccessfully.
- [3] The justice in chambers in this court referred the application under Rule 38 to a division of the court because of a vexatious litigant order made by Mr. Justice Donald of this court on February 16, 2017. The order stated IT IS FURTHER ORDERED THAT Janet Hoessmann, and anyone acting on her behalf, except a member in good standing of the Law Society of British Columbia, shall not file or attempt to file, by any means whatsoever, any document in the registry of the Court of Appeal of British Columbia pertaining to or in any way connected with the subject matter of the proceedings in the Court of Appeal Registry file numbers CA43129 and CA041321.

- [4] The actions referred to in the order were a Wills Variation Act claim that had been brought against the estate of Ms. Hoessmann's father by her two brothers and her mother. Each of these plaintiffs was awarded \$50,000. The second file referred to was the appeal from Ms. Hoessmann's removal as executrix of the estate. Thus if this appeal "pertains to or is any way connected with" either of those matters, the order of Donald J.A.S. would apply and Ms. Hoessmann would require leave to pursue her appeal. I emphasize that there is no application for leave before us today.
- [5] Mr. Justice Ball's order prohibits Ms. Hoessmann from "initiating any proceedings against the Aldergrove Credit Union without the consent of the court". He recounted the "long and torturous history" of the proceedings before him, much of which involved the mortgage held by defendant ACU on property of the estate. Eventually the property was made the subject of an order nisi that was unsuccessfully appealed by Ms. Hoessmann; ACU was then given conduct of sale, which Ms. Hoessmann also unsuccessfully appealed; and she also failed in an application to obtain a stay before a judge of this court in chambers. There then ensued a litany of proceedings when Ms. Hoessmann refused to deliver vacant possession. (See paras. 31-6 of Ball J.'s reasons.)
- [6] Ms. Hoessmann then commenced the present proceeding in June 2013, as I said, purporting to act on behalf of the estate, seeking damages against ACU and Devnor, which by then was the owner of the property, for various losses resulting from the foreclosure. (See para. 4 of Ball J.'s reasons, which Ms. Hoessmann agrees accurately describes the action.) The action against Devnor was ultimately dismissed by Madam Koenigsberg in October 2013. The Supreme Court made an award of special costs in 2014 against Ms. Hoessmann in favour of Devnor.
- [7] At paras. 60-65, Ball J. described the allegations in the Notice of Civil Claim which he describes as referring to "a variety of matters which were or ought to have been advanced by the plaintiff during the foreclosure action". It was, he ruled, too late for Ms. Hoessmann to raise "these matters for litigation that has already been adjudicated".
- [8] I do not intend to rehearse further the history described in Ball J.'s reasons. For our purposes it is sufficient to note that the property with which this action is concerned was the property of Ms. Hoessmann's father and thus was part of his estate. The ACU mortgage was granted by her father and the various applications and appeals relating to the foreclosure, the sale, and the delivery of vacant possession were obviously related to his estate and her role as executrix. They seem to have continued even after she had been removed as such in September 2013.
- [9] It seems to me clear that the appeal Ms. Hoessmann is pursuing is "connected with the subject matter of the proceedings" of the previous proceedings for purposes of the vexatious litigant order made by Donald J.A. in February 2017. Indeed it appears that most of the matters she is now complaining of were decided in those proceedings and may be res judicata. (In addition to res judicata, issue estoppel may also apply.) In any event, the

purpose of the vexatious litigant order made by this court was to avoid the continued repetition of hopeless appeals and applications which have already been ruled upon. In these circumstances, I conclude that any proceedings in this appeal do require that the leave of the court be obtained.

[10] As mentioned, counsel for ACU chose not to attend today but would, I suspect, want to be present at any application for leave by Ms. Hoessmann. I would therefore order that these proceedings be stayed and I do so that in the expectation that if Ms. Hoessmann wishes to seek leave, she will do so promptly. If she fails to obtain such leave within 60 days, the defendant will be entitled to apply to have the appeal dismissed as abandoned.

[11] MACKENZIE J.A.: I agree.

[12] HARRIS J.A.: I agree. "The Honourable Madam Justice Newbury"

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