

CANADA / JUDGMENT

Keremelevski v. British Columbia (Workers' Compensation Board)

2019 BCCA 428

COURT

British Columbia Court of Appeal

DECIDED

8 November 2019

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2019 BCCA 428 Keremelevski v. British Columbia (Workers' Compensation Board)

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Keremelevski v. British Columbia (Workers' Compensation Board),

2019 BCCA 428

Date: 20191108

Docket: CA46316

Between:

Ivanco Keremelevski

Appellant

(Petitioner)

And

Compensation Advisory Services Workers Advisers' Office and Annette Hoffer

and Cynthia Fung-Sunter and Work Safe BC Office and Steve Nesin and

Workers' Compensation Appeal Tribunal Office and Brenda Anderson and the

Attorney General of British Columbia Office and Others as John Doe 1, 2, 3

Respondents

(Respondents)

Before:

The Honourable Mr. Justice Groberman

The Honourable Madam Justice Fenlon

The Honourable Madam Justice DeWitt-Van Oosten

On review from: An order of a Justice of the Court of Appeal for British Columbia
(in Chambers), dated September 13, 2019 (Keremelevski v. British Columbia
(Workers' Compensation Board), 2019 BCCA 338, Docket CA46316).

Oral Reasons for Judgment

The Appellant, appearing in person:

I. Keremelevski

No one appearing on behalf of the Respondents

Place and Date of Hearing:

Vancouver, British Columbia

November 8, 2019

Place and Date of Judgment:

Vancouver, British Columbia

November 8, 2019

Summary:

Mr. K. is a vexatious litigant. He is required to seek permission before filing proceedings in this Court. A judge in chambers denied him permission to bring an application for leave to appeal an interlocutory order in summary proceedings in the Supreme Court. He applies to vary the order of the Chambers Judge. Held: Application for review dismissed. The Chambers judge made no error of principle in her approach nor did she misapprehend the evidence or law in any way that materially affected her judgment. Mr. K. has no arguable application for leave to appeal.

[1] GROBERMAN J.A.: Mr. Keremelevski is a vexatious litigant. On September 13, 2011, this Court made an order that precludes him from filing documents without first obtaining permission from a judge in chambers (Keremelevski v. Insurance Corporation of British Columbia, 2011 BCCA 369).

[2] The current proceedings were commenced in the Supreme Court in 2012. They arise out of injuries suffered by Mr. Keremelevski in 2004 and out of his subsequent dealings with the Workers' Compensation Board and related entities. On June 10, 2019, he brought an application in the Supreme Court seeking a number of orders, described as follows:

1. An Order for Leave to amend my petition and set aside or Appeal the Orders/Decisions of Review Division Decisions Officers as Mr. Nick Attewell's dated August 23, 2018, also Dec. 06, 2018, issued by Ms. Susan Hynes that was confirmed by her on Jan. 11, 2019.
2. An Order for further amendments of my Petition registered on Nov. 26, 2012, that was amended on April 25, 2018.
3. An Order for Work Safe, BC (WCB) to pay lump sum amount of about \$578,321.94, retroactive plus monthly allowance for loss wage benefits which was established at \$3,700.40 and 90% of which is \$3,330.36 to be paid every month and six (6) months of back pay total of \$19,982.16, that is calculated from the date of approval which is August 01st, 2018, till present date of April 02nd, 2019, including compounded interest.
4. Order to enforce the decision made on Aug. 01, 2018, by Ms. Sarah Chang - Loss Wage Rate Officer at WCB, plus interest/compounded interest. In addition more funds for decisions pending to be made by WCB, WCAT and the Court, which will be in the millions.
5. I am seeking an Order for a minimum payment of \$3 million immediately for me and to be able to start living a dignified life, while awaiting all my WCB claims to be dealt correctly & appropriately also payments to be approved and enforced accordingly.
6. An alternative Order for State to fund my Legal Representative as well.
7. An Order for 18A Summary Judgment.
8. Orders for all necessary copies required to file in Court be provided by the Court Registry.
9. Grant any other order deem just & appropriate to all the circumstances of this case.
- [3] In detailed reasons indexed as 2019 BCSC 1282, Hinkson C.J.S.C., sitting in chambers, dismissed most aspects of the application. He did allow the filing of the amended petition of April 25, 2018, apart from those portions that purported to add a new party and make allegations against that party.
- [4] Mr. Keremelevski sought permission in this Court to file an application for leave to appeal. In thorough reasons indexed as 2019 BCCA 338, Fisher J.A., sitting in Chambers, dismissed the application. She correctly described the test as being whether the proposed leave application was reasonably founded or arguable.
- [5] Justice Fisher considered each of the applications for relief that had been dismissed by Hinkson C.J.S.C., and found no arguable basis to suggest that errors had been made. She concluded:
- [20] From my review of all the material before me, the confusion arises from Mr. Keremelevski's misguided efforts to bring these matters before the court. While I certainly appreciate how difficult this has been for him, I cannot see that he has demonstrated a reasonably founded or arguable case that would justify granting him permission to proceed in this court.

- [6] Mr. Keremelevski seeks to review the Chambers judge's decision. His argument raises no errors of principle. In large part, his written argument consists of hyperbolic terms casting aspersions on the reasons for judgment, describing them using words such as "scurrilous", "opprobrious", "contrivance", "colluding" and "contumelious". He alleges, with no foundation, that the judge acted in bad faith and with bias. He has, to his credit, been more moderate in his oral submissions.
- [7] The test that Mr. Keremelevski must meet on this review application is well-established. It is that set out in *Haldorson v. Coquitlam (City)*, 2000 BCCA 672 at paras. 6 and 7, and subsequently cited by numerous decisions of this Court:
- [6] The test that ought to be applied by a reviewing court on an application to review an order of a chambers judge is set out in the reasons of Chief Justice McEachern in *Frew v. Roberts* (1990), 29 B.C.L.R. (3d) 34 (B.C.C.A.). At p. 36, Chief Justice McEachern, in a majority judgment, said this:

In my view, the determination whether an appeal should be dismissed in such circumstances is not truly a matter of discretion. It was a matter of judgment to be applied to the circumstance of the case. The learned Chambers Judge who heard the matter, in his judgment, thought that the appeal should be dismissed and that is the order he made.

It is my view that we should not interfere with that decision unless we are satisfied that the Chambers Judge was wrong in the legal sense and not merely that he exercised a discretion incorrectly. I am not persuaded that he erred in his disposition of the matter. ...

[Emphasis by Lambert J.A. in *Haldorson*]

- [7] It comes to this: that the review hearing is not a hearing of the original application as if it were a new application brought to a division of the court rather than to a chambers judge, but is instead a review of what the chambers judge did against the test encompassed by asking: was the chambers judge wrong in law, or wrong in principle, or did the chambers judge misconceive the facts. If the chambers judge did not commit any of those errors, then the division of the court in review should not change the order of the chambers judge.
- [8] Mr. Keremelevski's argument has not demonstrated any error of law, material misapprehension of facts, or error in principle. With one exception there is nothing in Fisher J.A.'s reasons that can be described as an error.
- [9] The one issue that does arise is at paras. 18 and 19 of the reasons, where Fisher J.A. said:
- [18] Mr. Keremelevski confirmed today that one of his primary concerns relates to his application to amend the petition to seek review of three more recent decisions of the Review Division that denied him an extension of time to have certain decisions relating to his long-term wage rate reconsidered. Chief Justice Hinkson, in his reasons at para. 20, noted that WCAT took no position on this aspect of Mr. Keremelevski's application because the relief sought in that regard was not against WCAT. As I indicated above, the Chief Justice

refused to permit these amendments on the basis that WCAT did not have jurisdiction to hear appeals from such decisions and thus the amendments were unnecessary. At para. 39 of his reasons, he stated that he would not permit these amendments "as against WCAT". However, at para. 68, he made the following order:

- (a) The amendments sought in the petition to judicially review the August 23, 2018, December 6, 2018 and January 11, 2019, Review Division decisions are denied.
- [19] Although para. 20 of the reasons appears to limit the application of the denial of this amendment to WCAT, there seems to be good reason for this. The WCB Review Division is not named as a respondent, or if it is, it is certainly not clear in the style of cause.
- [10] I would agree with the judge that the naming of the WCB Review Division is not clear in the style of cause. Almost all of the respondents are, indeed, misnamed. The judge did recognize, however, that the Workers' Compensation Board is a party:
- [2] The order dismissed virtually all of the relief sought in an application brought by Mr. Keremelevski pursuant to a petition proceeding against a number of respondents, some improperly named, including the Workers' Compensation Appeal Tribunal (WCAT), the Workers' Compensation Board (WCB), the Workers' Advisers Office (WAO), individuals associated with those entities, and the Attorney General of British Columbia.
- [11] The "Review Division of the WCB" is not a separate legal entity from the Workers' Compensation Board, so the style of cause is, in fact, sufficient to include that entity.
- [12] That said, it is important to recognize that the Chief Justice did not dismiss the claims that were sought by way of the amendments. He merely refused to make them part of this petition. The petition is already an unwieldy proceeding, and there is no basis on which it could be said that the refusal to incorporate yet more independent matters into it represents an improper exercise of discretion by Hinkson C.J.B.C. Mr. Keremelevski's proposed leave application remains unarguable.
- [13] Mr. Keremelevski also expresses some concern with para. 12 of the Supreme Court chambers decision, which states that Mr. Keremelevski "maintains that due to the two accidents in 2004, he is permanently and totally disabled from working". Justice Fisher quoted the passage in para. 3 of her judgment. Mr. Keremelevski says that the Chief Justice misapprehended his arguments: he does not claim that the accidents left him permanently and totally disabled from working, but rather permanently and partially disabled from working. I accept, for the purposes of this proceeding, that Hinkson C.J.S.C. may have misspoken, but it does not affect the soundness of his reasons, nor the results that he arrived at. Similarly, any such error had no effect on Fisher J.A.'s reasoning or conclusions.
- [14] In the result, I would dismiss the application for review.
- [15] FENLON J.A.: I agree.

[16] DEWITT-VAN OOSTEN J.A.: I agree.

[17] GROBERMAN J.A.: The application for review is dismissed.

"The Honourable Mr. Justice Groberman"

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Prepared on 28 October 2026 · Esheria