

CANADA / JUDGMENT

Keremelevski v. Guisti Nairne

2020 BCCA 372

COURT

British Columbia Court of Appeal

DECIDED

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2020 BCCA 372 Keremelevski v. Guisti Nairne COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: Keremelevski v. Guisti Nairne, 2020 BCCA 372 Date: 20201210 Docket: CA47070 Between: Ivanco Keremelevski Appellant (Plaintiff) And Giusti Nairne and Ronald D. Nairne and Matthew D. Burtini and The Law Society of British Columbia and Erin Berger and The Office of the Ombudsperson in British Columbia and Megan Stewart and others as John Doe 1, 2, 3 Respondents (Defendants)

- and - Between: Ivanco Keremelevski Appellant (Plaintiff) And Pioneer Garage Limited dba Pioneer Chrysler Jeep and Arman Ahmadi and Lucky Eight Enterprises Ltd. dba Lucky Eight Auto and Ralph Lanzel, Tony Guo and Bero Investments Ltd., King George Nissan Surrey BC and Applewood Nissan Surrey BC & Nissan Finance Canada Inc. & others as John Doe 1, 2, 3 Respondent (Defendants)
- and - Between: Ivanco Keremelevski Appellant (Petitioner) And Health Profession Review Board and Marilyn Clark and Brenda L. Edwards and College of Physicians and Surgeons of British Columbia and Sydney and J.G. Wilson and Allen Francis Chou and Jerzy Stanislaw, George Jaworski and others as John Doe 1, 2, 3 Respondents (Respondents) Before: The Honourable Mr. Justice Harris (In Chambers) On appeal from: Orders of the Supreme Court of British Columbia, dated October 9, 2020 (Keremelevski v. Guisti Nairne, Vancouver Docket S2010000); October 23, 2020 (Keremelevski v. Pioneer Garage Limited dba Pioneer Chrysler Jeep, Vancouver Docket S2010659); and October 26, 2020 (Keremelevski v. Health Profession Review Board, Vancouver Docket S2010164). Oral Reasons for Judgment The Appellant, appearing in person (via teleconference): I. Keremelevski Counsel for the Respondents, Giusti Nairne, Ronald D. Nairne, and Matthew D. Burtini (via teleconference): M.K. Sull Counsel for the Respondents, Law Society of British Columbia and Erin Berger (via teleconference): Heather E. Doi Counsel for the Respondent, College of Physicians and Surgeons of British Columbia (via teleconference): R.E.S. Tillman Counsel for the Respondent, Allen Francis Chou (via teleconference): M.A. Clark Place and Date of Hearing: Vancouver, British Columbia December 10, 2020 Place and Date of Judgment: Vancouver, British Columbia December 10, 2020 Summary: Acting on its own motion, the Court replaced an existing vexatious litigant order with another order imposing additional restrictions to prevent the abuse of the Court's processes.

- [1] HARRIS J.A.: I am acting on the basis of my own motion with respect to this matter. The matters that have come before me are ones in which Mr. Keremelevski is applying for leave to file what amounts to notices of application for leave to appeal, as I decipher them, in several orders in various matters. At least, in part, the matters in issue involve the denying of leave to file a notice of civil claim against the respondents, his former lawyer, and others. Reviewing the attempted filings, it is almost impossible to make sense of them.
- [2] Mr. Keremelevski wants to adjourn the leave application or applications, but to continue with his indigent status application and an application for substitutional service. In light of the order I am going to pronounce, the indigent fee application is adjourned generally and the substitutional service application is dismissed.

Background

- [3] These matters are the latest in a long line of unmeritorious applications made by Mr. Keremelevski in this Court. Mr. Keremelevski is subject to a vexatious litigant in this Court. Pursuant to a September 13, 2011 order of Justice Hall in Chambers, Mr. Keremelevski is prohibited from filing any document in the registry of the Court of Appeal until he obtains leave to do so from a justice of the Court: *Keremelevski v. Insurance Corp. of British Columbia*, 2011 BCCA 369. At para. 12 of that decision, Justice Hall writes:
- [12] Mr. Keremelevski has clearly demonstrated that he has no real comprehension of the court process and he persistently files applications in this Court that are completely unmeritorious. As Mr. Justice Frankel observed in the above excerpt from the *Houweling* case [2010 BCCA 315], judicial resources are not infinite, and the filing of what could justly be described as a blizzard of applications does take up valuable court time that ought to be used to hear other matters that have substance. As Frankel J.A. also observed, while persons are entitled to have their day in court, they are not entitled to be always in court "day after day in the futile pursuit of remedies to which [they are] not entitled". As I observed, Mr. Keremelevski has initiated a significant number of proceedings in this Court that have had no possibility of success. He has also sought unsuccessfully leave to appeal to the Supreme Court of Canada in some of the proceedings. As is the case with the instant proceedings, it appears these matters have been devoid of merit with no possibility of success. In these circumstances, it seems apparent to me that it is now requisite for this Court to take action to prevent the misuse of its process. It is time, and indeed probably past time, to make an order in the case of Mr. Keremelevski in the terms made in the earlier cases referred to that Mr. Keremelevski will be precluded from filing any further documents in this Court without leave first obtained from a justice of the Court in chambers. As I observed in the *Booty* case [2010 BCCA 185], such an order is requisite to prevent misuse of the litigation process. [Emphasis added.]
- [4] The specific order arising from Justice Hall's decision reads: It is further ordered that Mr. Keremelevski, and anyone acting on his behalf, shall not file or attempt to file, by any means whatsoever, any document in any registry of the Court of Appeal for British Columbia

without first obtaining the leave of a justice of this Court. At the time the order was made in 2011, Mr. Keremelevski had initiated approximately 15 different appeals in this Court. Since the last order was imposed, he has attempted to initiate the following: Case Number Style of Cause Status Party Date Initiated Role CA39266 KEREMELEVSKI, IVANCO (A) V. NEAIME, HABIB Closed Keremelevski, Ivanco 11Aug2011 Appellant CA40403 KEREMELEVSKI, IVANCO (A) V. UKRAINIAN ORTHODOX CHURCH Closed Keremelevski, Ivanco 23Nov2012 Appellant CA40728 KEREMELEVSKI, IVANCO (A) V. VWR CAPTIAL CORPORATION Closed Keremelevski, Ivanco 18Mar2013 Appellant CA41319 KEREMELEVSKI, IVANCO (A) V. KONJARSKI, ZAKLINA Closed Keremelevski, Ivanco 25Oct2013 Appellant CA41528 KEREMELEVSKI, IVANCO (A) V. ST. ARCHANGEL MICHAEL SERBIAN Closed Keremelevski, Ivanco 23Jan2014 Appellant CA46316 KEREMELEVSKI, IVANCO (A) V. COMPENSATION ADVISORY SERVICES Closed Keremelevski, Ivanco 19Aug2019 Appellant CA47070 KEREMELEVSKI, IVANCO (A) V. NAIRNE, GIUSTI Active Keremelevski, Ivanco 22Oct2020 Appellant

- [5] Mr. Keremelevski still fundamentally misunderstands what is and is not an appropriate use of court processes. Many of the above listed matters were initially struck in the Supreme Court on the basis that the underlying pleadings were frivolous, vexatious and otherwise an abuse of the court's process. They then involved numerous applications to this Court, all of which were dismissed, but which demanded significant time and resources from the named respondents and the Court. In *Keremelevski v. Ukrainian Orthodox Church St. Mary Metropolitan*, 2012 BCCA 237 at para. 16 (Chambers), Justice Prowse observed:
- [16] ... While Mr. Keremelevski may be sincere in believing that he has a good cause of action, this is another example of his misguided attempt to use the Supreme Court Civil Rules and other statutes to rectify what he believes are wrongs he has suffered at the hands of others. Unfortunately for all concerned, the result is a waste of the court's time and resources and unnecessary and significant expense to the parties caught up in this litigation.
- [6] In the Supreme Court, Mr. Keremelevski has exhibited the same pattern of conduct. While it is not determinative of any vexatious litigant order imposed in this Court, I am entitled to consider Mr. Keremelevski's conduct in lower courts in arriving at my conclusion: *Gonzales v. British Columbia (Attorney General)*, 2019 BCCA 88 at para. 44.
- [7] Justice Griffin (as she then was) described similar concerns in *Keremelevski v. Ukrainian Orthodox Church*, 2012 BCSC 2087 at para. 3:
- [3] I am concerned that the plaintiff does not understand the purpose of the justice system and does not understand what courts are here to do. When I look at the allegations in his notice of civil claim, it does appear to me that there is a strong argument to be made on the part of the defendants that the plaintiff is advancing claims that are not known to law and do not belong in a court.

- [8] In 2013, Mr. Keremelevski was issued a second vexatious litigant order in the Supreme Court: *Keremelevski v. V.W.R. Capital Corporation*, 2013 BCSC 612. In the V.W.R. matter, Mr. Keremelevski had named 13 defendants and was at one point a party to 14 separate actions in which he asserted a claim to the property in question: at paras. 1, 28. He lost every case, and yet attempted to file another action regarding the same claims which was struck out as an abuse of process: at paras. 29, 44. Justice Fenlon (as she then was) declared him to be a vexatious litigant pursuant to s. 18 of the Supreme Court Act, R.S.C. 1985, c. S-26: at paras. 59-61. In doing so, she said:
- [58] There comes a point at which a litigant, Mr. Keremelevski, loses the right to commence proceedings in the trial courts. To paraphrase Madam Justice Southin in *Household Trust Co. v. Golden Horse Farms Inc.* (1992), 65 B.C.L.R. (2d) 355 (B.C.C.A.): ... the Supreme Court of British Columbia has an inherent jurisdiction and a corresponding duty to exercise that jurisdiction to protect a [defendant] ... who seeks relief in that Court from proceedings by a [plaintiff] who is vexatiously abusing the process of the court. That it is a jurisdiction to be exercised with great caution, I have no doubt. But not to exercise it where there is no other way to bring reason into proceedings is, in effect, to deprive the [defendant] ... of justice according to law. The court if it fails to act becomes but a paper tiger.
- [59] The time has come and it is overdue.
- [9] Mr. Keremelevski has also been granted, in the past, indigent status. While indigent status is a necessary and important tool for facilitating access to justice, Justice Fenlon commented on the import of this status in the case of an individual like Mr. Keremelevski at para. 54:
- [54] Mr. Keremelevski has consistently resorted to the courts when faced with a decision he does not like. He has not only been before the court about the property litigation, but he has also continued litigation against other entities, including Canada Post, ICBC, and most recently the Ukrainian Orthodox Church and the Compensation Board. He has been granted indigent status which has served to immunize him from the related expense that he would otherwise incur on commencing such actions and setting down motions within those actions. [Emphasis added.] Not only does Mr. Keremelevski himself avoid the expense of initiating such proceedings, his indigent status also means that any cost awards ordered against him are effectively useless. Therefore, the parties he needlessly implicates in litigation have little if any hope of recovering their expenditures in defending themselves against his allegations.
- [10] Unfortunately, it is clear that the restrictions imposed by Justice Hall's order have not deterred Mr. Keremelevski from attempting to initiate futile proceedings that consume valuable court resources and cause unnecessary expense to other parties. The current matters brought by Mr. Keremelevski are simply a continuation of his past conduct. He has implicated his former lawyer, other lawyers who have never acted for him, the Law Society of British Columbia, the Office of the Ombudsperson in British Columbia, and other individuals whose relation to the proceedings is entirely unclear. His allegations against these parties are indecipherable. He has already been denied leave to file a notice of civil

claim against the named respondents, and now seeks leave to appeal that denial of leave, or at least he would have done had I not dealt with the matters in this way. In short, this is another series of frivolous procedural steps taken by Mr. Keremelevski that lack a reasonable, arguable, or cogent foundation in law.

- [11] Not only has Mr. Keremelevski continued his pattern of vexatious litigation, however, he has also done so in a manner that has caused registry staff to become increasingly uncomfortable and concerned. I am told that Mr. Keremelevski persistently attempts to file materials improperly in the registry, trying to reopen appeals that have been closed by final orders for many years. He ignores explicit staff instructions. He has been attending the registry almost every day for the last two weeks. His behaviour is growing worse, as I understand it, and it is clear that the order in place is insufficient to curb it.
- [12] Accordingly, I have determined that the vexatious litigant order must be amended. Analysis and Disposition
- [13] Mr. Keremelevski's current order is not made pursuant to s. 29 of the Court of Appeal Act, R.S.B.C. 1996, c. 77; it was pronounced pursuant to the Court's jurisdiction to prevent abuse of its own process, as is this one. Such orders can be done on the Court's own motion, as is this one: *Houweling Nurseries Ltd. v. Houweling*, 2010 BCCA 315.
- [14] As mentioned, Mr. Keremelevski's current order stipulates he cannot file any materials in the Court of Appeal's registry unless he first obtains leave of a justice of the Court. That order has been inadequate to protect court processes from abuse and a more stringent order is therefore required: *Houweling* at para. 44; *Pearlman v. I.C.B.C.*, 2012 BCCA 398.
- [15] It is necessary that the vexatious litigant order is modified so that he no longer is able to file any materials unless represented by counsel. In *Booty v. Hutton*, 2013 BCCA 71 (Chambers), var'd *Hutton v. Zelter*, 2015 BCCA 217, this Court made the following order: IT IS ORDERED that [the litigant] and anyone acting on his/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, other than an application to discharge or vary this order pursuant to s. 9(6) of the Court of Appeal Act; IT IS FURTHER ORDERED that neither [the litigant] nor anyone acting on his/ her behalf other than a member in good standing of the Law Society of British Columbia shall attend in person at the Court of Appeal registry and shall not file or attempt to file any document in the Registry, other than an application to discharge or vary this Order pursuant to s. 9(6) of the Court of Appeal Act; IT IS FURTHER ORDERED that as an exception to the other provisions of this order, in the event that [the litigant] is a named respondent in an appeal, he may file a notice of appearance, and may apply in chambers for leave to file other documents as a respondent in that appeal. He may also attend at the registry for the sole purpose of filing the permitted documents in the event that he is a named respondent in an appeal.
- [16] I make the same order in respect of Mr. Keremelevski.

[17] Registry staff are authorized to reject any document that is attempted to be filed in contravention of this order. I direct that the current attempting filings not be accepted for filing by the registry and these matters be struck from the list. I will have an order prepared and entered and ensure that it is provided to Mr. Keremelevski. "The Honourable Mr. Justice Harris"

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