

CANADA / JUDGMENT

Martin Estate v. Dediu

2025 BCCA 218

COURT

British Columbia Court of Appeal

DECIDED

2 June 2025

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2025 BCCA 218 Martin Estate v. Dediu

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Martin Estate v. Dediu,

2025 BCCA 218

Date: 20250602

Docket: CA49154

Between:

Sandra Ann Martin as Executor and Trustee of the Estate of

Douglas Warren Martin also known as Douglas W. Martin,

Douglas Martin and Doug Martin

Appellant

(Defendant)

And

Michael Dediu

Respondent

(Plaintiff)

Before:

The Honourable Justice Dickson

The Honourable Madam Justice Horsman

The Honourable Justice Mayer

On appeal from: An order of the Supreme Court of British Columbia, dated
May 19, 2023 (Dediu v. Martin Estate, 2023 BCSC 852, Victoria Docket S180378).

Oral Reasons for Judgment

Counsel for the Appellant

(appearing via videoconference on June 2, 2025):

J.G. Dives, K.C.

Counsel for the Respondent:

M.R. Mark

Counsel for the Appellant and the Respondent on the Applications:

M.A. Davis

Place and Date of Hearing:

Vancouver, British Columbia

May 23, 2025

Place and Date of Judgment with Oral Reasons to Follow:

Vancouver, British Columbia

May 23, 2025

Place and Date of Oral Reasons:

Vancouver, British Columbia

June 2, 2025

Summary:

The appellant appealed an order which required her to pay damages to the respondent in an estate matter. After the appeal was commenced, the appellant entered into a settlement agreement with the respondent, according to which she assigned to him her cause of action in professional negligence against the lawyers who advised her in the events surrounding the underlying dispute. In exchange, the respondent agreed not to pursue payment of the judgment ordered at trial. The appellant had previously agreed to have the Lawyers Indemnity Fund ("LIF") pay for counsel to represent her in the appeal. After entering into the settlement agreement and a joint representation with the respondent, the appellant sought to withdraw her consent to the appeal proceeding. Counsel for LIF pursued the appeal notwithstanding the appellant's withdrawal of consent and contended the appellant was not entitled to withdraw her consent to the appeal proceeding. Jointly-retained counsel for the appellant and respondent brought several

applications, including an application to have the appeal quashed as an abuse of process.

Held: The appeal is quashed as an abuse of process. The appellant has withdrawn her consent to the appeal proceeding and this is not the appropriate forum to determine the nature, terms, and enforceability of the appellant's prior agreement with LIF, a non-party to the appeal.

DICKSON J.A.:

Introduction

- [1] On May 23, 2025, we quashed Sandra Martin's appeal from the order of Justice Weatherill, which required her to pay Michael Dediu \$2,568,075 in damages and declared that funds she held in a Guaranteed Investment Certificate are owned beneficially by Mr. Dediu (the "Order"), with oral reasons to follow. These are those reasons.

Background

- [2] Mr. Dediu brought the underlying action against Ms. Martin as executrix and trustee of the estate of her late father, Douglas Martin. The action concerned Ms. Martin's sale of shares held in trading accounts in her father's name but beneficially owned by Mr. Dediu. Justice Weatherill made the Order on May 19, 2023, following a five-day trial.
- [3] The Lawyers' Indemnity Fund ("LIF") insures the lawyers who represented Ms. Martin when she sold the shares and at the trial before Justice Weatherill. On June 16, 2023, Craig Dennis, K.C., a lawyer appointed and paid for by LIF, filed a Notice of Appeal on behalf of Ms. Martin pursuant to an agreement that she reached with LIF. The agreement was summarized by Claims Counsel for LIF, Surindar Nijjar, in a June 23, 2023 letter in which he stated, among other things, that Mr. Dennis acted for Ms. Martin alone on the appeal, LIF reserved the right to discontinue paying for the appeal, and, if LIF stopped paying, Mr. Dennis was entitled to stop acting for her. Mr. Nijjar also recommended that Ms. Martin seek independent legal advice, but noted that she "did not wish to do that at this time" and had asked LIF "to proceed with the Appeal as set out above".
- [4] Shortly after the Notice of Appeal was filed, Ms. Martin and Mr. Dediu jointly retained an Ontario lawyer, Milton Davis. On July 21, 2023, they entered into an Assignment and Cooperation Agreement with respect to the outstanding judgment. The Agreement provided that Ms. Martin would transfer the funds in the Guaranteed Investment Certificate and assign her claims against her former lawyers to Mr. Dediu, and Mr. Dediu would not pursue further payment of the judgment. A few days later, Mr. Davis wrote to Mr. Nijjar to notify him that he acted for Mr. Dediu and Ms. Martin, both of whom would be asserting professional negligence and other claims against Ms. Martin's former lawyers. Mr. Davis also said this:

Ms. Martin has determined that it is in her best interests and those of the Estate to resolve the litigation with Mr. Dediu. They have now done so.

Accordingly, we are instructed on behalf of Ms. Martin and the Estate to ask that Lawyers Indemnity Fund instruct Mr. Dennis to withdraw or discontinue the appeal.

- [5] In a responding letter, Mr. Nijjar advised Mr. Davis that, if Ms. Martin insisted on terminating the appeal, LIF would argue in a future negligence action that she had failed to mitigate her damages.
- [6] On August 3, 2023, counsel for Ms. Martin's former lawyers, John Dives, K.C., wrote to Mr. Davis in further response to Ms. Martin's request that LIF instruct Mr. Dennis to withdraw the appeal. Like Mr. Nijjar in his earlier letter, Mr. Dives asserted that "[p]roper mitigation requires that your client proceed with the appeal". In an August 8, 2023 reply letter, Mr. Davis expressed disagreement with Mr. Dives' assertions on several issues. Then he stated:

In order to avoid further debate on the subject of the appeal, we are prepared to recommend to our clients that they stand down from any objection to proceeding with the appeal, in return for the claim against your clients being tolled on the following basis:

1. The claim against your clients will be issued
2. You will accept service of it on behalf of your clients.
3. The appeal will proceed with reasonable dispatch.
4. The action will be stood down pending the hearing of the appeal.
5. A tolling agreement will be entered into to document this arrangement.
6. In the event the appeal is dismissed, a defence on behalf of your clients will be delivered within 30 days of the Court of Appeal's reasons.

Please let us know at your earliest convenience if this proposal is agreeable to you

- [7] On August 14, 2023, Mr. Dives advised Mr. Davis that he had "instructions from my clients to agree to the terms set out in your letter of August 8, 2023".
- [8] On November 6, 2023, Ms. Martin and Mr. Dediu commenced an action against Ms. Martin's former lawyers seeking damages for professional negligence, breach of trust, breach of fiduciary duty, and breach of contract.
- [9] The appeal came on for hearing on February 13, 2024, but was adjourned to allow the parties to address the issue of whether the estate or Ms. Martin personally was liable for the judgment. Thereafter, Mr. Davis wrote to Mr. Dennis and stated that the appeal was moot due to the Assignment and Cooperation Agreement, which had changed the "litigation landscape" and should have been disclosed immediately to the Court.
- [10] On July 8, 2024, Mr. Dediu's local counsel, Michael Mark, delivered an unfiled application to quash the appeal. He sought case management regarding the application, which the Registrar determined would be heard together with the appeal.

[11] On October 5, 2024, Ms. Martin sent an email to Mr. Dennis stating:

Mr. Craig Dennis,

You and I have never spoken. Nonetheless, I am writing to you for the purpose of withdrawing my consent to you or the Lawyers Indemnity fund continuing to act in my name on the appeal of this matter (CA49154). The appeal, which I understand was adjourned by the Court to have certain issues addressed, have not been addressed, and this appeal has now dragged on for far longer than expected. At present there is no end in sight.

I further understand that the Court was not advised of the settlement that I made with Mr. Dediu even though you and Lawyers Indemnity fund have been aware of the settlement since July 2023.

I do not wish to have the appeal continue and I am requesting that you advise the Appellate Court that I wish the appeal to be withdrawn. Please confirm to me by return email that the appeal is being withdraw.

Thank you,

Sandra Martin

[12] Mr. Dennis responded promptly to Ms. Martin's email. In doing so, he stated that he would advise LIF of Ms. Martin's changed position, refrain from taking pro-active steps to advance the appeal pending further response, and get back to her as soon as possible.

[13] On October 18, 2024, Mr. Dives wrote to Mr. Davis regarding Ms. Martin's withdrawal of consent to the appeal proceeding further. He asserted that such a step constituted "a blatant refusal to mitigate her alleged damages" that was "not open to her". He also stated:

Ms. Martin entered into an agreement pursuant to which she consented to the appeal being conducted in her name. Accordingly, she no longer has control over the appeal. This situation is no different from an insured conducting a subrogation claim in the name of the insured. It does so pursuant to a contract. An insured in that situation would not be able to instruct counsel to abandon the claim and as the insured is not the client, counsel would have to refuse such an instruction if given.

It is not open to Mr. Dennis to accept the instruction from Ms. Martin. His client is LIF and he is instructed pursuant to a valid agreement giving conduct of the litigation to LIF.

[14] On October 25, 2024, Mr. Dives filed a Notice of Change of Representation indicating that he had replaced Mr. Dennis as counsel for Ms. Martin on the appeal. Ms. Martin did not authorize Mr. Dives to file the Notice of Change of Representation.

[15] On October 28, 2024, Mr. Dives delivered a filed copy of the Notice of Change of Representation to Mr. Davis. In his covering letter, he wrote:

Ms. Martin is not Dominus Litus with respect to the appeal. Accordingly, she cannot withdraw consent to the appeal proceeding, nominate counsel, or take any step interfering with the proper conduct of the appeal. This letter is to inform you, and Mr. Dennis, that we have been instructed by LIF to assume conduct of the appeal. Attached hereto, please find the Notice of Change of Representation filed in the Court of Appeal to that effect on October 25, 2024.

- [16] On January 7, 2025, counsel for Mr. Dediu filed an application for an order quashing the appeal and an application for an order removing Mr. Dives as counsel of record for Ms. Martin.
- [17] Mr. Dediu's applications came on for hearing with the appeal on May 23, 2025. At the outset of the hearing, Mr. Dives stated that he appeared for the appellant; Mr. Mark stated that he appeared for the respondent; and Mr. Davis stated that he appeared for both Mr. Dediu and Ms. Martin on the two applications. Following a brief discussion with counsel, we decided to hear submissions on the applications before proceeding further with the appeal.

Discussion

- [18] Mr. Davis submitted that we should quash the appeal as an abuse of process for two reasons: first, Mr. Dennis failed immediately to disclose the Assignment and Cooperation Agreement to the Court in breach of the immediate disclosure rule; and, second, as a result of that agreement there is no longer any lis between the only two parties to the appeal and the appeal is moot. In the alternative, he submitted that we should make an order removing Mr. Dives as counsel of record for Ms. Martin because he acts for LIF, not Ms. Martin, he opposes Ms. Martin's interests and is in an irreconcilable position of conflict, and he has refused to stand down despite Ms. Martin's instructions to do so.
- [19] For his part, Mr. Dives acknowledged that he does not act for Ms. Martin and that Ms. Martin does not wish to proceed with the appeal. However, he submitted that Ms. Martin lacks the ability to withdraw her consent to LIF pursuing the appeal in her name, based on the agreement recorded in the correspondence described above. According to Mr. Dives: having consented to the appeal proceeding in her name, Ms. Martin forfeited the right to terminate it or interfere in its conduct; because he is counsel for LIF alone he owes Ms. Martin no duty of loyalty; and the situation is analogous to a subrogation claim. Moreover, Mr. Dives submitted, the appeal is not moot and should proceed, in any event, in light of the significant legal consequences for both parties if it succeeds, the adversarial context, and the overall interests of justice.
- [20] We do not consider it necessary or desirable to decide whether the immediate disclosure rule was breached, whether Mr. Dives is in a conflict of interest, or whether the appeal is moot based on the Assignment and Cooperation Agreement. Given that Ms. Martin is the appellant, she does not consent to the appeal proceeding, and she and Mr. Dediu are the only two parties to the appeal, its continuation would be a manifest abuse of the process of this Court.

[21] Mr. Dives alleges that, by withdrawing her consent to proceed with the appeal, Ms. Martin has breached her agreement with LIF, a non-party. As he acknowledged in oral submissions, in asking that we nevertheless hear the appeal, he is, in substance, seeking an order for its specific performance. However, this is plainly not an appropriate forum for determining contested issues between Ms. Martin and a non-party, such as the nature and meaning of Ms. Martin's agreement with LIF or whether she was justified in withdrawing her consent to the appeal. The uncontroverted fact is that she has done so. For present purposes, that is the beginning and end of the matter.

Conclusion

[22] For the foregoing reasons, we quashed the appeal. Mr. Dediu is entitled to costs of the applications and the appeal.

[23] After we quashed the appeal, Mr. Dives asked us to award costs to LIF up to the point at which Ms. Martin withdrew her consent to proceed with the appeal. To repeat, LIF is not a party to the appeal. We decline to make any such costs award.

"The Honourable Justice Dickson"

"The Honourable Madam Justice Horsman"

"The Honourable Justice Mayer"

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