

CANADA / JUDGMENT

Moran v. Gutoski

2009 BCCA 488

COURT

British Columbia Court of Appeal

DECIDED

2 November 2009

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

2009 BCCA 488 Moran v. Gutoski COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Moran v. Gutoski, 2009 BCCA 488 Date: 20091102 Docket: CA035804 Between: Derek Frederick Moran Appellant (Plaintiff) And Michelle Gutoski also known as Michelle Julie Sargent Respondent (Defendant) Before: The Honourable Madam Justice Levine The Honourable Mr. Justice Chiasson The Honourable Madam Justice Garson On appeal from: Supreme Court of British Columbia, January 16, 2008, (Moran v. Gutoski, 2008 BCSC 127, Kelowna Reg. 67795) Oral Reasons for Judgment Appellant appearing In Person: D.F. Moran Counsel for the Respondent: P.J. Hergott Place and Date of Hearing: Vancouver, British Columbia November 2, 2009 Place and Date of Judgment: Vancouver, British Columbia November 2, 2009

- [1] LEVINE J.A.: This is an appeal by Derek Moran from an order of Mr. Justice Barrow made December 21, 2007. Mr. Justice Barrow dismissed the appellant's action to recover money allegedly owed under a loan guaranteed by the defendant. The loan was made in May 2002, in the amount of \$25,000 with interest at four percent per month.
- [2] The issue at trial was the appropriation of payments that had been made by the borrower to the appellant. The trial judge found that the payments had been appropriated to the loan of \$25,000 with the result that the full amount of the loan had been paid. On that basis, Barrow J. dismissed the action and awarded costs at Scale B against the appellant.
- [3] The appellant appealed the order on its merits. In materials filed with the Court, he argued that Barrow J. had erred in law and in his factual conclusions with respect to the issue of appropriation of the payments that had been made by the borrower. In his Notice of Appeal, he did not expressly raise the issue of costs, and in his factum sought only an order for costs in the event that he was successful on the appeal. There were no arguments or submissions made in either his factum or his reply factum with respect to the order for costs.
- [4] At the hearing of the appeal this morning, Mr. Moran notified the Court and counsel for the respondent for the first time that he intended to abandon his appeal from the substantive order dismissing his action to recover the money loaned, but advised the Court and counsel that he wished to continue his appeal only with respect to the order for costs. In his submissions, he essentially blamed his counsel for continuing the action after it should have been obvious, he submits, that there was no real claim in law to be made for repayment of

the loan. He made allegations concerning the representation by his counsel, as well as allegations concerning the motives of not only his counsel but also of counsel for the respondent.

- [5] It is my opinion that the appellant's appeal with respect to the costs award made against him must be dismissed. Nothing he has said in his submissions suggests that there was any error made by the Court in exercising its discretion in awarding costs against him. Under the Rules of the Supreme Court of British Columbia and under the Rules of this Court, costs follow the event unless the judge or the court otherwise orders. An award of costs is termed a discretionary order and unless the judge errs in law or in principle, this Court on appeal will not interfere with an order for costs. In this case the order for costs was made in the ordinary course. The appellant was unsuccessful in his action and as is the normal procedure in the Supreme Court of British Columbia, costs were ordered against him.
- [6] I am also of the opinion that the respondent is entitled to the costs of this appeal. Not only did the appellant not give any notice of his intention to abandon the substance of his appeal until this morning's hearing, he did not, during a pre-hearing conference arranged for last Friday afternoon, take the opportunity to advise either the Court or counsel for the respondent of his intention to abandon his appeal.
- [7] As a result, counsel for the respondent undertook preparation to oppose the appeal in substance, and travelled here this morning for this hearing. These entire proceedings were brought by the appellant to recover on a loan he made, and he now suggests that the action was misguided. To use his term, it was a "farce" as of four years ago. As the plaintiff in the action, he had carriage of it. It was his responsibility to instruct his counsel. He was familiar with the events that had occurred. The documents that were in issue were for the most part his documents. There is no basis to accept his submissions that he should not be liable for the costs of both proceedings.
- [8] In the result, I would order that the appeal is dismissed and that the respondent is entitled to the costs of the appeal.
- [9] CHIASSON J.A.: I agree.
- [10] GARSON J.A.: I agree.
- [11] LEVINE J.A.: The appeal is dismissed and the respondent is entitled to the costs of the appeal. "The Honourable Madam Justice Levine"

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/09/04/2009BCCA0488.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/moran-v-gutoski-2009>

Prepared on 26 October 2026 · Esheria