

CANADA / JUDGMENT

Morriss v. British Columbia

2021 BCCA 451

COURT

British Columbia Court of Appeal

DECIDED

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2021 BCCA 451 Morriss v. British Columbia COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: Morriss v. British Columbia, 2021 BCCA 451 Date: 20211126 Docket: CA47773 Between: Sean Morriss Appellant (Plaintiff) And Her Majesty the Queen in Right of the Province of British Columbia Respondent (Defendant) Before: The Honourable Mr. Justice Harris The Honourable Madam Justice Stromberg-Stein The Honourable Mr. Justice Marchand On appeal from: An order of the Supreme Court of British Columbia, dated September 28, 2021 (Morriss v. British Columbia (Attorney General), 2021 BCSC 2101, Vancouver Docket S208216). Oral Reasons for Judgment No one appearing on behalf of the Appellant Counsel for the Respondent (via videoconference): D.G. Cowie Place and Date of Hearing: Vancouver, British Columbia November 26, 2021 Place and Date of Judgment: Vancouver, British Columbia November 26, 2021 Summary: In November 2010, the appellant entered a consent order with the Province dismissing various claims related to mineral rights and declaring him a vexatious litigant. He was prohibited from beginning any legal proceedings in respect of the dismissed claims without leave of the court. Costs were ordered against the appellant, but the costs order was stayed so long as the appellant complied with the prohibition. In August 2020, the appellant sought damages in relation to the dismissed claims and obtained a default judgment without notice to the Province. The chambers judge set aside the default judgment, declared that the appellant violated the vexatious litigant order, granted leave to the Province to enforce the costs award made in the vexatious litigant order, and ordered special costs against the appellant. The appellant challenges all aspects of the chambers judge's decision. Held: Appeal dismissed. The appellant was required to seek leave of the court prior to filing his notice of civil claim and amended notice of civil claim. He pursued his claims despite being reminded that he was required to obtain leave. The chambers judge made no reversible error.

- [1] HARRIS J.A.: We are in a situation where we are dealing with a vexatious litigant order. We are dealing with a situation in which the appellant has set this date, and the appellant has decided that he will not appear or participate. His explanation as we understand it is that he says he did not have the underlying order, but that order has been available for some time now. We do not have an application to adjourn the hearing.

- [2] The appellant had the opportunity to participate in the hearing, and in all of those circumstances, having consulted with my colleagues, we are all of the view that we should proceed to deal with the merits of the appeal. To note on the record, we have reviewed the written material that was in the record and that has been filed in this Court in this proceeding.
- [3] I will ask Mr. Justice Marchand to give the first reasons. MARCHAND J.A.:

Introduction

- [4] The plaintiff, Sean Morriss, appeals orders made by the chambers judge on September 28, 2021, that: · set aside a default order entered on August 30, 2021, without notice to the defendant, Her Majesty the Queen in Right of the Province of British Columbia (the "Province"); · dismissed his amended notice of civil claim; · declared him to be in breach of a vexatious litigant order made on November 3, 2010; · granted the Province leave to enforce a costs award made as part of the vexatious litigant order; and · awarded special costs to the Province.
- [5] Mr. Morriss has failed to identify any reversible error made by the chambers judge. I would, therefore, dismiss the appeal.

Background

- [6] Sean Morriss has a long-standing grievance against the Province in relation to rights he alleges he had with respect to certain mineral claims in or near the Stein Valley Nlaka'pamux Heritage Park in British Columbia. His grievance dates back to the 1970s.
- [7] On November 3, 2010, Mr. Morriss entered into a consent order before Justice Hyslop of the Supreme Court of British Columbia. Under the terms of that order:
1. Mr. Morriss' action against the Province was dismissed with costs of \$50,000 payable by Mr. Morriss to the Province in relation to the dismissed action and a related action that Mr. Morriss had discontinued;
 2. Mr. Morriss was declared a vexatious litigant in respect of the claims advanced in the dismissed action (the "dismissed claims");
 3. Mr. Morriss was prohibited from commencing "any legal proceedings in any Court" against the Province and others in respect of the dismissed claims without leave of the court (the "prohibition");
 4. The enforcement of the costs order was stayed so long as Mr. Morriss complied with the prohibition; and
 5. The Province was granted leave to enforce the costs order "summarily and without further order of the Court" upon Mr. Morriss commencing any proceeding contrary to the prohibition.

- [8] Mr. Morriss filed a notice of civil claim in this action on August 14, 2020. The notice of civil claim seeks substantial damages in relation to the dismissed claims.
- [9] By letter dated August 31, 2020, in accordance with British Columbia Supreme Court Administrative Notice AN-16, the Province advised the Supreme Court Registry that Mr. Morriss had been declared a vexatious litigant and that the notice of civil claim ought not to have been filed without Mr. Morriss having first obtained leave of the court. Counsel for the Province immediately emailed to Mr. Morriss a copy of the Province's letter to the Registry. Counsel informed Mr. Morriss that by filing the notice of civil claim he was liable to the Province for \$50,000 in costs in accordance with the vexatious litigant order made by Justice Hyslop.
- [10] Mr. Morriss filed an amended notice of civil claim on July 9, 2021. The amended notice of civil claim largely repeats the allegations in the notice of civil claim.
- [11] On August 24, 2021, the Province filed a notice of application seeking a declaration that Mr. Morriss had violated the vexatious litigant order and other relief.
- [12] On or about August 30, 2021, without providing notice to the Province, Mr. Morriss obtained an order for default judgment in this proceeding.
- [13] On September 15, 2021, the Province filed an amended notice of application to add a request that the default judgment be set aside. The Chambers Judge's Decision
- [14] The chambers judge gave brief reasons for judgment.
- [15] After reciting the relevant background, the judge set out her understanding of Mr. Morriss' position. Mr. Morriss submitted that the vexatious litigant order made by Justice Hyslop should be set aside, primarily because it had been obtained by fraud. Mr. Morriss asserted he had been blackmailed into entering the order. Specifically, Mr. Morriss asserted he had been told that he would not be able to proceed with mining interests elsewhere if he continued with the litigation.
- [16] The chambers judge was unable to discern any evidence of fraud and confessed to not understanding all of Mr. Morriss' complaints. Regardless, the judge did not base her conclusions on frailties in Mr. Morriss' materials. Rather, she based her conclusions on the scope of the vexatious litigant order, the allegations in the amended notice of civil claim and Mr. Morriss' actions in taking out default judgment without notice to the Province. She held:
- [16] [I]t is clear to me that the subject matter of the claim in this action falls within the order of Madam Justice Hyslop and is a claim precluded by that order. For that reason, this action was not properly brought.

- [17] I set aside the default judgment entered on August 30, 2021. I dismiss the amended notice of civil claim. I declare that Sean Morriss has violated the November 3, 2010 order of Madam Justice Hyslop issued in Kamloops registry, File Number 28745. British Columbia has leave to enforce the costs awarded to the Province in the November 3, 2010 order of Madam Justice Hyslop issued in Kamloops registry, File Number 28745.
- [18] British Columbia also seeks an order for special costs, on the basis that Mr. Morriss has been in communication with counsel for British Columbia for a significant period of time, including before this application and during the time after which he had commenced the action. Notwithstanding that, he moved for default judgment without notice to British Columbia. British Columbia asserts that considering the order of Madam Justice Hyslop, his conduct has been reprehensible and is deserving of rebuke of the court. I agree with that submission and I order British Columbia to have special costs of this application.

Analysis

- [17] I can find no fault in the judge's reasons for judgment.
- [18] Simply put, regardless of Mr. Morriss' allegations of fraud and other possible misdeeds, his notice of civil claim and amended notice of civil claim raise the very issues that were the subject of the vexatious litigant order made by Justice Hyslop in 2010. Mr. Morriss required leave of the court to commence the present action. He did not obtain leave.
- [19] As the judge found, the action was "not properly brought." The judge was therefore quite right to set aside the default order, dismiss the amended notice of civil claim, declare Mr. Morriss to be in breach of the vexatious litigant order and, although not technically required, grant the Province leave to enforce the costs award made as part of the vexatious litigant order.
- [20] Turning to the issue of special costs, the law is well-established.
- [21] Special costs are awarded where there has been some form of "reprehensible conduct." Reprehensible conduct encompasses "scandalous or outrageous conduct" as well as "milder forms of misconduct deserving of reproof or rebuke": *Garcia v. Crestbrook Forest Industries Ltd.* (1994), 9 B.C.L.R. (3d) 242 (C.A.) at para. 17, 1994 CanLII 2570.
- [22] Special costs are not compensatory in nature; they are punitive. The purpose of special costs is to deter and to express the court's disapproval of litigation misconduct. In order to justify a special costs award, the circumstances must be "exceptional": *Smithies Holdings Inc. v. RCV Holdings Ltd.*, 2017 BCCA 177 at paras. 56, 131-133.
- [23] Among the bases for awarding special costs are abuse of the court's process, misleading the court and persistent breaches of the rules of court that prejudice the other party: *Westsea Construction Ltd. v. 0759553 B.C. Ltd.*, 2013 BCSC 1352 at para. 73.

[24] In the present case, Mr. Morriss persisted in pursuing a claim, including obtaining a default judgment, after being reminded that he required leave of the court to do so. He paid no heed to the warning and has cost the Province and the court considerable time and expense. It was open to the judge to find Mr. Morriss' conduct to be abusive and reprehensible and to order him to pay special costs.

Conclusion

[25] The terms of the vexatious litigant order were clear. Mr. Morriss required leave of the court to file his notice of civil claim and his amended notice of civil claim. He persisted in pursuing his claims despite being reminded that he required leave. In these circumstances, the judge committed no error in making the orders under appeal.

[26] I would dismiss the appeal.

[27] On the issue of costs of this appeal, Mr. Morriss has persisted with vexatious conduct clearly precluded by the vexatious litigant order. In all of the circumstances, I would award the Province special costs of the appeal.

[28] HARRIS J.A.: I agree.

[29] STROMBERG-STEIN J.A.: I agree.

[30] HARRIS J.A.: The appeal is dismissed. An award of special costs to the Province is made on this appeal. We would also dispense with the requirement that the appellant endorse the form of order. "The Honourable Mr. Justice Marchand"

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