

CANADA / JUDGMENT

Mountain-West Resources Ltd. v. Fitzgerald

2005 BCCA 372

COURT

British Columbia Court of Appeal

DECIDED

13 July 2005

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2005 BCCA 372 Mountain-West Resources Ltd v. Fitzgerald COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Mountain-West Resources Ltd. v. Fitzgerald, 2005 BCCA 372 Date: 20050713 Docket: CA031816 Between: Mountain-West Resources Limited Appellant (Plaintiff) And Michael Joseph Fitzgerald Respondent (Defendant) Before: The Honourable Madam Justice Newbury The Honourable Mr. Justice Low The Honourable Madam Justice Levine P.R. Bennett and M.W. Mounter Counsel for the Appellant R.D. Holmes Counsel for the Respondent Place and Date of Hearing: Vancouver, British Columbia 28 October 2004 Written submissions received: May 24, June 7 and 14, 2005 Place and Date of Judgment: Vancouver, British Columbia 13 July 2005 Supplementary Reasons of the Court Reasons for Judgment for the Court:

- [1] On 27 January 2005 we gave judgment dismissing this appeal: [2005] B.C.J. No. 126. The respondent now seeks an order for special costs, or in the alternative increased costs, of the appeal, of the chambers proceedings in the trial court, and of an earlier appeal in this court.
- [2] The order under appeal provided for recovery by the respondent of ordinary costs. The respondent did not ask for special costs and filed no cross appeal of the costs provision in the order. It would not be appropriate for us to consider in the first instance a claim for special costs in the chambers proceedings in the trial court.
- [3] The respondent did not ask for special costs of the appeal in its factum. Without deciding whether this omission precludes the claim for special costs post-judgment, we are of the view that the claim for special costs in this court is without merit. The respondent's argument in support of the claim essentially rests on an assertion that the appellant unreasonably pursued a weak claim. Although the appellant did not have a strong case against the respondent, its case for renewing its writ of summons and for an order granting leave for service of it ex juris was arguable. This is not an appeal in which it is appropriate to order recovery of anything other than ordinary appeal costs.
- [4] The respondent will recover costs of the appeal on scale 1. Costs of the earlier appeal will flow from the order with respect to costs made therein.

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- [5] The parties will bear their own costs of the application for special costs. "The Honourable Madam Justice Newbury" "The Honourable Mr. Justice Low" "The Honourable Madam Justice Levine"
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