

CANADA / JUDGMENT

Narayan v. Solus Trust Company Limited

2025 BCCA 233

COURT

British Columbia Court of Appeal

DECIDED

26 June 2025

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

2025 BCCA 233 Narayan v. Solus Trust Company Limited

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Narayan v. Solus Trust Company Limited,

2025 BCCA 233

Date: 20250626

Dockets: CA50187; CA50316

Between:

Stanley George Narayan

Appellant

(Plaintiff)

And

Solus Trust Company Limited as Administrator of the Estate of

Susan Lesley Zwarts, deceased, and Tapestry Foundation for Health Care,

now known as St. Paul's Foundation of Vancouver

Respondents

(Defendants)

Before:

The Honourable Mr. Justice Butler

The Honourable Justice Riley

The Honourable Justice Gomery

On an application to vary: An Order of the Court of Appeal for British Columbia,

dated March 12, 2025 (Narayan v. Solus Trust Company Limited,

Vancouver Dockets CA50187; CA50316).

Oral Reasons for Judgment

Counsel for the Appellant

(appearing on June 25, 2025):

C. Ke

The Appellant, appearing in person

(on June 26, 2025):

S.G. Narayan

Counsel for the Respondent, Solus Trust Company Limited:

R. Johal

Place and Date of Hearing:

Vancouver, British Columbia

June 25 and 26, 2025

Place and Date of Judgment:

Vancouver, British Columbia

June 26, 2025

Summary:

The applicant seeks to vary or cancel orders of Justice Bennett in chambers requiring him to post security for costs in two appeals he has brought from orders of Justices Thomas and Justice MacNaughton in the Supreme Court.

Held: Application dismissed in part. There is no reviewable error in the justice's decision to order security for costs paid in the appeal from the order of Thomas J. It is not possible to review the decision with respect to the appeal from MacNaughton J.'s order without the judge's reasons. Accordingly, that part of the application is adjourned and that appeal is stayed on the basis that either party may apply to have the application determined when a transcript of the judge's reasons is available.

GOMERY J.A.:

Introduction

- [1] Justice Bennett ordered the appellant, Mr. Narayan, to post \$7,000 security for costs in each of two appeals he has brought, one from an order made by Justice Thomas, and the other from an order made by Justice MacNaughton (as she then was). He applies to review Bennett J.A.'s order.
- [2] The review application is brought pursuant to s. 29 of the Court of Appeal Act, S.B.C. 2021, c. 6. This Court has repeatedly held that the standard of review is highly deferential. A review application can only succeed if the decision under review is tainted by an error of law, an error of principle, or a misconception of the facts: *J.P. v. K.S.*, 2024 BCCA 78 at para. 11.
- [3] Justice Bennett's decision involved an exercise of discretion under s. 34(1) of the Court of Appeal Act. As established by authorities and noted by Bennett J.A., the discretion involves consideration of whether security is required in the interests of justice having regard to four factors: *Pereira v. Klonarakis*, 2023 BCCA 454 at para. 4; *Lu v. Mao*, 2006 BCCA 560 at para. 6. Mr. Narayan does not dispute the legal test. He challenges Bennett J.A.'s evaluation of one of the factors, namely, the merits of the appeals.
- [4] Concerning the merits of the appeal from Thomas J.'s order, Bennett J.A. referred to an earlier decision of Justice Dickson refusing Mr. Narayan's application for a stay of the orders in issue in this appeal. Justice Dickson considered that the appeal lacks merit. Justice Bennett agreed. This is the primary point in issue on this review application.
- [5] Addressing the appeal from MacNaughton J.'s order, Bennett J.A. echoed Dickson J.A. in noting the absence of a transcript of the oral reasons given by MacNaughton J. for her order, making it impossible to ascertain that there is arguable merit to the appeal. Justice Bennett's decision was made more than three months ago, and we remain without a transcript.

Procedural and legal background

- [6] The underlying legal proceeding concerns the estate of Susan Zwarts, who died on June 21, 2021. Under Ms. Zwarts' will made in 2015, her entire estate passes to the St. Paul's Foundation of Vancouver. The estate is represented by Solus Trust Company Limited ("Solus") as the administrator.
- [7] Mr. Narayan says that he was Ms. Zwarts' common law spouse at the time of her death. He retained counsel and brought a proceeding against Ms. Zwarts' estate in the Supreme Court of British Columbia for relief that included a variation of the will in his favour pursuant to s. 60 of the Wills, Estates and Succession Act, S.B.C. 2009, c. 13 [WESA]. The variation claim could only succeed if Mr. Narayan was Ms. Zwarts' common law spouse as defined in s. 2(1) of WESA. Acting on behalf of the estate, Solus disputed it.

- [8] Certain facts were not in dispute. Ms. Zwarts owned a house and it is clear that Mr. Narayan sometimes occupied a basement suite in the house. She was an elderly alcoholic who tended to binge drink. He was 24 years younger than she. They met in detox.
- [9] St. Paul's Foundation applied for a summary trial of the question of Mr. Narayan's status as a common law spouse. The summary trial application was heard over three days before Thomas J. Mr. Narayan was represented by counsel at the hearing. In lengthy oral reasons indexed at 2024 BCSC 2115, Thomas J. allowed the application and declared that Mr. Narayan was not a common law spouse, effectively bringing an end to the variation action.
- [10] For the summary trial application, Mr. Narayan submitted an affidavit describing an intimate marital relationship. His position was that the matter was not suitable for a disposition on a summary trial that would require the court to disbelieve Mr. Narayan.
- [11] Justice Thomas considered Mr. Narayan's affidavit in the context of the totality of the evidence concerning Ms. Zwarts' circumstances and intentions and concluded:
- [102] In this case, Mr. Narayan has provided sworn statements that are unsupported by any objective evidence. The available objective evidence does not support the existence of a marriage-like relationship but rather paints the picture of a transient and abusive relationship.
- [12] Justice Thomas considered the jurisprudence bearing on the court's discretion to grant judgment on a summary trial, even where the judgment entails a negative assessment of the credibility of a witness who has sworn an affidavit (in particular at para. 105, citing *Amacon Alaska Development Partnership v. ARC Digital Canada Corp.*, 2023 BCCA 34 at paras. 39-42). He concluded that he could find the facts and arrive at a just and fair determination by way of summary trial (at para. 122).
- [13] After the hearing before Thomas J., Mr. Narayan ceased to be represented by counsel.
- [14] Subsequent to Thomas J.'s decision, MacNaughton J. made a further order in the Supreme Court on December 11, 2024. She cancelled a certificate of pending litigation filed by Mr. Narayan against title to the house, ordered him to vacate the property, ordered him to pay rent for the period from July 2021 to December 2024, and to pay \$50,000 in punitive damages and also costs. As noted, MacNaughton J. gave oral reasons that have not been transcribed.
- [15] On December 19, 2024, Mr. Narayan's application for a stay of the orders of Thomas and MacNaughton JJ. came on for hearing before Dickson J.A. She reserved judgment until January 15, 2025 when she issued an order staying some of the orders made by MacNaughton J. but not the order made by Thomas J. or the order that he vacate the property.

- [16] Mr. Narayan's "Notice of Application to Vary an Order of a Justice" lists only Court of Appeal file CA50187 relating to the appeal from Thomas J.'s order. He is self-represented. Both parties on this application seem to have assumed that both appeals are in play. It is in the interests of justice that we proceed on that basis.
- [17] Mr. Narayan's argument is entirely directed to the appeal from Thomas J.'s order. The reasoning seems to be that MacNaughton J.'s order assumes the validity of the order of Thomas J. that preceded it, so that, if the earlier order falls, so must the later order. I accept that an appeal from MacNaughton J.'s order could succeed on that basis.
- [18] However, there may be another basis for an appeal of MacNaughton J.'s order because counsel for Solus concedes that some of the orders she made were not grounded in a pleading filed by Solus. Counsel further concedes that this is not a point that was drawn to the attention of either Dickson or Bennett J.J.A. It is impossible to come to a final conclusion on this question in the absence of MacNaughton J.'s reasons. I will return to this point.

Mr. Narayan's argument on this review application

- [19] Mr. Narayan advances the following arguments.
- [20] First, he says that he did not receive fair notice of the hearing before Bennett J.A., which took place on March 10, 2025. He says that, while he received an email concerning the application on February 28, it only provided a link to materials he was unable to access and he was unaware of the hearing date until March 6. He says that he never received a copy of the application book.
- [21] Second, Mr. Narayan says that he has been trying for months to get a lawyer but the lawyers he has contacted until very recently have had conflicts of interest or declined to act. He was able to speak with a lawyer yesterday, who appeared for him when this matter first came on for hearing yesterday, but she was unable to attend to represent him today. I understand his contention to be that the hearing before Bennett J.A. was unfair because he was not represented by counsel and wished to be.
- [22] Third, Mr. Narayan says that he has evidence that was not presented at the summary trial although he told his lawyer about it. He says this evidence consists of witness statements and videos of himself with Ms. Zwarts. He says that he was not properly advised what a summary trial was.
- [23] Fourth, Mr. Narayan believes that the will which was admitted to probate was a fake document and has not been properly investigated, despite his instructions to his former lawyer.

Analysis

- [24] I reject Mr. Narayan's submission that he did not receive fair notice of the hearing before Bennett J.A. The record shows that, on February 28, 2025, counsel for Solus emailed him a letter advising of the hearing date on March 10 and inviting him to advise if he required hard copies of Solus' notice of application and application book. Mr. Narayan has provided only an email and not a physical address for service. Counsel repeated the advice and invitation in a further email on March 6. Mr. Narayan attended the hearing and did not seek an adjournment.
- [25] Nor was the hearing before Bennett J.A. unfair because Mr. Narayan was not represented by counsel. It is a reality of litigation that parties often appear without counsel in this Court. The mere absence of counsel does not make the process unfair. He had been without counsel since the fall of 2024. He commenced this appeal and sought a stay before Dickson J.A. as a self-represented litigant. He appeared before Bennett J.A. and did not seek an adjournment to retain counsel. It has been three months since the hearing before Bennett J.A., and he still does not have counsel for today's application. I do not accept that he could not have retained counsel for the application before Bennett J.A., many months after he parted company with his former counsel, had he made reasonable efforts.
- [26] Turning to his third argument, Mr. Narayan is unhappy that his former counsel addressed the summary trial application before Thomas J. on the basis of his affidavit alone, without other evidence that he says would have substantiated his account of events. This was a deliberate decision addressed by Thomas J. in his reasons. He said:
- [107] Mr. Narayan's counsel says that a former neighbour of the Deceased who lived beside her prior to 2012 recalls that Mr. Narayan and the Deceased made "quite a couple". He also says that he tracked down a witness who lives in Ontario, that his file noted had "helpful evidence." He advised that the neighbour of the Deceased from 2012 to 2020 might be a witness should the matter proceed to trial. He further advised that additional evidence may come up from now to trial or during cross-examination at the trial. He gave no indication of what the evidence the neighbour who lived beside the Deceased from 2012 to her death might be.
- [108] Counsel explained that he did not provide this evidence as he felt that the credibility issues were sufficient to make the matter inappropriate for resolution at summary trial. He now argues that the matter is inappropriate for summary trial because he did not provide this evidence and that more evidence might come to light prior to a conventional trial.
- [109] In my view, Mr. Narayan had time to obtain the enumerated evidence and put the evidence before the court but felt that it was unnecessary to go to the time and expense to obtain this evidence because he was confident he could establish the matter was not appropriate for resolution through summary trial due to the need to assess Mr. Narayan's credibility.

- [27] Justice Thomas concluded that it was not unjust to decide the case on the basis of the evidence Mr. Narayan through his counsel had chosen to present. He added:
- [116] The main flaw in Mr. Narayan's case was not a lack of witnesses identified by his counsel. Mr. Narayan testified that he and the Deceased were essentially solitary. The main flaw was the lack of objective evidence such as photographs, documents, receipts, cards, bank statements, and other documents that common sense and common human experience would expect would be in Mr. Narayan's possession given the nature of the relationship he purports to have had with the Deceased.
- [28] Justice Thomas' determination that it was not an obstacle to summary determination of this case against Mr. Narayan that there was evidence that Mr. Narayan had chosen not to put forward, was discretionary. In the circumstances of this case, it was sensible. It is most unlikely that a division of this Court would interfere with it on appeal.
- [29] Mr. Narayan's final argument attacking the validity of the will is speculative. More important, for present purposes, it has nothing to do with the order under appeal, which simply declares that Mr. Narayan was not Ms. Zwarts' spouse.
- [30] In summary, none of Mr. Narayan's arguments persuades me that Bennett J.A. erred in her assessment of the merits of the appeal from Thomas J.'s order or in any other manner in the exercise of her discretion to order that he post security for costs of that appeal.

The appeal from MacNaughton J.'s order

- [31] The appeal from MacNaughton J.'s order stands on another footing. On the one hand, there may be merit to the appeal on a ground not brought to the attention of Dickson or Bennett J.A. On the other hand, we do not have MacNaughton J.'s reasons for judgment.
- [32] In para. 18 of her reasons, Bennett J.A. stated:
- [18] The MacNaughton reasons have yet to be filed. The onus is on the appellant to demonstrate that his appeal has merit. He seemed to be of the view that the reasons would be sent to him. They do not appear to have been transcribed.
- [33] Mr. Narayan might have understood from this that he needed to take steps to order a transcript, but he tells us that his understanding was different. He says that over the past several months he has repeatedly attended at the Supreme Court Registry to obtain the reasons, and he was told that he would have to wait for them to come in. Whatever was his understanding, the fact remains that we do not have them.

[34] In my view, the outcome of this review application turns on an assessment of the merits of the appeal from MacNaughton J.'s order and it would not be right to decide that question without the reasons in hand, particularly in light of the concessions made by counsel for Solus. Accordingly, I would adjourn this review application and stay the underlying appeal on the basis that either party may apply to have the application determined and the stay set aside when a transcript of the reasons is available.

Disposition

[35] For these reasons, I would dismiss the review application in CA50187. I would adjourn the review application and stay the appeal in CA50316 on the basis that either party may apply to have the application determined and the stay set aside when a transcript of the reasons of MacNaughton J. is available.

[36] BUTLER J.A.: I agree.

[37] RILEY J.A.: I agree.

[38] BUTLER J.A.: The review application in CA50187 is dismissed. The review application in CA50316 is adjourned and the appeal is stayed on the basis that either party may apply to have the application determined and the stay set aside when a transcript of the reasons of MacNaughton J. is available.

"The Honourable Justice Gomery"

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/25/02/2025BCCA0233.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/narayan-v-solus-trust-company-limited-2025>

Prepared on 29 October 2026 · Esheria