

CANADA / JUDGMENT

Samos Investments Inc. v. Pattison et al

2000 BCCA 497

COURT

British Columbia Court of Appeal

DECIDED

6 September 2000

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2000 BCCA 497 Citation: Samos Investments Inc. v. Pattison et al Date: 20000906 2000 BCCA 497 Docket: CA026851 CA026852 Registry: Vancouver COURT OF APPEAL FOR BRITISH COLUMBIA ORAL REASONS FOR JUDGMENT Before: The Honourable Mr. Justice Hollinrake September 6, 2000 The Honourable Mr. Justice Low The Honourable Madam Justice Proudfoot Vancouver, B.C. CA026851 BETWEEN: SAMOS INVESTMENTS INC. PLAINTIFF (RESPONDENT) AND: JAMES A. PATTISON, P. NICHOLAS GEER, JIM PATTISON LTD., JIM PATTISON INDUSTRIES LTD., GREAT PACIFIC INDUSTRIES INC., GREAT PACIFIC CAPITAL CORP., DONALD C. SELMAN, 461847 BRITISH COLUMBIA LTD., and WESTAR GROUP LTD. DEFENDANTS AND: CANADIAN IMPERIAL BANK OF COMMERCE DEFENDANT (APPELLANT) CA026852 BETWEEN: SAMOS INVESTMENTS INC. PLAINTIFF (RESPONDENT) AND: DONALD C. SELMAN, 461847 BRITISH COLUMBIA LTD., WESTAR GROUP LTD. and CANADIAN IMPERIAL BANK OF COMMERCE DEFENDANTS AND: JAMES A. PATTISON, P. NICHOLAS GEER, JIM PATTISON LTD., JIM PATTISON INDUSTRIES LTD., GREAT PACIFIC INDUSTRIES INC., and GREAT PACIFIC CAPITAL CORP. APPELLANTS I.G. Nathanson, Q.C. J. Wood, Q.C. and B. Elwood appearing for the Appellants James A. Pattison, P. Nicholas Geer, Jim Pattison Ltd., Jim Pattison Industries Ltd., Great Pacific Industries Ltd., and Great Pacific Capital Corp. appearing for the Appellant Canadian Imperial Bank of Commerce D.W. Roberts, Q.C. and W. Baker appearing for the Respondent

- [1] HOLLINRAKE, J.A.: This is a review of an order made by Madam Justice Ryan of this court in chambers with respect to a stay of proceedings of the action in the court below.
- [2] Mr. Roberts, counsel for the applicant before us today, made what I consider to be a very compelling submission on each of the three components of what a party must demonstrate in order to obtain a stay of proceedings. His submissions were based on, quite properly and quite understandably, how he read the reasons for judgment of Madam Justice Ryan. Mr. Nathanson took us through those reasons and he saw them or read them in a different way than did Mr. Roberts, as I understood both counsel.
- [3] I think that Mr. Nathanson is correct in how he reads the reasons for judgment of Madam Justice Ryan. On that basis, I am satisfied that it is not open to this court to interfere with the decision of Madam Justice Ryan. I think it is clear that she found and that there is an arguable case to be made for leave and on the merits of the case itself.

- [4] Much was said about the issue of balance of convenience and irreparable damage. Again, I make the point that Mr. Roberts made a very compelling submission on that issue. However, I am satisfied from the reasons themselves that the Pattison Group, if you will, and the CIBC are correct in saying that that requirement, that is the requirement of irreparable damage and balance of convenience, is met in this case in that this case is a singular one as being an alleged abuse of the process of the courts in collaterally attacking an order of the court below made by Mr. Justice Cohen which has not been appealed. I think the submission of the Pattison Group and the CIBC that to not maintain the stay would be to permit an allegedly continued abuse of the process of this court is decisive in this case.
- [5] I would dismiss the review.
- [6] LOW, J.A.: I agree.
- [7] PROUDFOOT, J.A.: I agree.
- [8] HOLLINRAKE, J.A.: The review is dismissed. "The Honourable Mr. Justice Hollinrake"

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