

CANADA / JUDGMENT

Tambosso v. Nguyen

2025 BCCA 338

COURT

British Columbia Court of Appeal

DECIDED

25 August 2025

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

2025 BCCA 338 Tambosso v. Nguyen

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Tambosso v. Nguyen,

2025 BCCA 338

Date: 20250825

Docket: CA50152

Between:

Daniel Tambosso

Appellant

(Defendant)

And

Cao Hung Nguyen

Respondent

(Plaintiff)

FILE SEALED IN PART

Before:

The Honourable Justice Iyer

(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated

August 26, 2024 (Nguyen v. Tambosso, 2024 BCSC 1551,
Vancouver Docket S221616).

Oral Reasons for Judgment

The Appellant, appearing in person:

D. Tambosso

Counsel for the Respondent:

M.E. Abdelkader

Place and Date of Hearing:

Vancouver, British Columbia

August 25, 2025

Place and Date of Judgment:

Vancouver, British Columbia

August 25, 2025

Summary:

The applicant seeks an extension of time to file his appeal record. He also seeks to stay the order below pending appeal, to have the registrar pay the cost of the transcript, and to seal certain portions of the application book and appeal record. Held: the applications are dismissed, and page 97 of the respondent's materials is sealed. It is not in the interests of justice to grant the extension of time because the appeal has no prospect of success, the applicant did not adequately explain the delay in proceeding with the appeal, and there was significant prejudice to the respondent. The applicant did not meet the high burden to seal the record, except in respect of images of his driver's license and passport.

IYER J.A.:

Introduction

- [1] The applicant, Mr. Tambosso, applies for four orders: to extend the time to file his appeal record, to stay the order below pending appeal, to seal certain portions of the application book and appeal record, and to have the registrar pay the cost of the transcript.
- [2] Mr. Tambosso and the respondent, Mr. Nguyen, were involved in cryptocurrency markets. Mr. Nguyen made a short-term cryptocurrency loan to Mr. Tambosso. After Mr. Tambosso did not repay the loan, Mr. Nguyen commenced a civil claim against Mr. Tambosso and applied for summary trial.

- [3] In reasons dated August 26, 2024, ("Decision") and indexed as 2024 BCSC 1551, the chambers judge found the matter was suitable for summary trial. She held the loan from Mr. Nguyen to Mr. Tambosso was a valid and enforceable contract, Mr. Tambosso had breached it, and he had no applicable defense. She ordered Mr. Tambosso to pay Mr. Nguyen damages of approximately \$1.2 million, plus interest running from September 24, 2021, and costs.
- [4] Mr. Tambosso filed a notice of appeal on September 24, 2024, within the 30-day limit. However, he did not comply with subsequent filing deadlines: he did not file his appeal record within 60 days after the filing of the notice of appeal or file his factum within 30 days after filing the appeal record. He took no steps in the appeal for nine months until June 23, 2025, when he filed the present application.

Issues

- [5] The central issue is whether the application to extend the time to file his appeal record should be granted. The stay order and the question of the cost of the transcript do not arise unless Mr. Tambosso is successful on that issue. A separate issue is whether portions of the application book should be sealed.

Should the Time Extension be Granted?

- [6] The factors to consider in applications to extend the time limits in an appeal are:

1. Was there a bona fide intention to appeal?
2. When were the respondents informed of the intention?
3. Would the respondents be unduly prejudiced by an extension of time?
4. Is there merit in the appeal?
5. Is it in the interests of justice that an extension be granted?

Davies v. C.I.B.C. (1987), 15 B.C.L.R. (2d) 256 at 260 (C.A.), 1987 CanLII 2608; see also Culos Development (1996) Inc. v. Baytalan, 2025 BCCA 58 at para. 13 (Chambers).

- [7] With respect to the merits, an appellant need only demonstrate that the appeal is not devoid of all merit or not "doomed to fail": Culos at para. 30. The overriding question is whether it is in the interests of justice to grant the extension: Tan v. Tan, 2024 BCCA 312 at para. 12 (Chambers).
- [8] Mr. Tambosso deposes that he had a genuine interest in proceeding with his appeal, but was unaware of the filing deadlines because he is self-represented. Mr. Nguyen says Mr. Tambosso did not take any further steps in the appeal until he sought to enforce the judgment against Mr. Tambosso.

- [9] Self-represented litigants are afforded some flexibility in meeting the Court's procedural requirements; however, they must demonstrate that an extension of time is in the interests of justice: *J.P. v. K.S.*, 2024 BCCA 78 at para. 27.
- [10] Although Mr. Nguyen was initially informed of Mr. Tambosso's intention to appeal, it was reasonable for him to assume Mr. Tambosso was not proceeding with it after the time limits expired.
- [11] With respect to prejudice, Mr. Nguyen deposes that the loans he made to Mr. Tambosso represented all his personal savings and Mr. Tambosso's failure to repay the loan has adversely affected his mental health. He submits that continuing the proceedings adds to his costs and creates uncertainty.
- [12] Mr. Tambosso addresses the merits of his appeal at length. He submits the chambers judge erred in finding: (1) the matter was suitable for summary determination, (2) there was a contract between the parties, and (3) the defenses of mistake, impossibility or frustration, and duress were not made out.
- [13] The appeal has no prospect of success on the first ground. The standard of review of a judge's finding that a matter is suitable for summary determination is deferential. That means, absent a clear conclusion that insufficient weight has been given to relevant considerations, or the decision appears clearly wrong, this Court should not intervene: *Universe v. Fraser Health Authority*, 2022 BCCA 201 at para. 53.
- [14] The chambers judge's reasons for finding a summary trial suitable were: first, in Mr. Tambosso's response to Mr. Nguyen's application, he did not take the position that a full trial was necessary; second, there were no credibility issues; and third, in the period before the hearing, Mr. Tambosso had not sought to obtain evidence to put before the court by discovering Mr. Nguyen or by obtaining expert evidence: Decision at paras. 7-11. Mr. Tambosso has not identified any error justifying appellate intervention on this ground.
- [15] The judge's determination that there was a valid contract between the parties, and her findings about its terms are also subject to a deferential standard of review. Unless there is an extricable question of law, the standard is palpable and overriding error: *Angus v. CDRW Holdings Ltd.*, 2023 BCCA 330 at para. 31. That means, unless the judge was incorrect on a purely legal issue, Mr. Tambosso must show she made an obvious error that affects the outcome of the case.
- [16] As the chambers judge observed, Mr. Tambosso's response to the notice of civil claim accepted there was a contract and that he failed to repay Mr. Nguyen as required: Decision at para. 55. In his response to the summary trial application, Mr. Tambosso also did not deny the existence of contracts between himself and Mr. Nguyen. He said he was unable to transfer the Bitcoins back to Mr. Nguyen because of third-party actions, and "the defendant remains steadfast in their commitment to honour contractual obligations".

- [17] However, as I have observed, at the summary trial, Mr. Tambosso argued there was no contract.
- [18] The chambers judge found that Mr. Tambosso sought a loan of 18 Bitcoins from Mr. Nguyen in early September 2021, explaining to him the loan would enable him to obtain sophisticated security software from a third party that would protect him from bad actors who had tried to scam him in the past. To obtain the software, Mr. Tambosso had to complete a security protocol called the "Bypass Procedure". He was at the last stage of the Bypass Procedure and had to pay 18 Bitcoins to the third party within a short period of time, failing which the costs would increase. If the Bypass Procedure was successful, Mr. Tambosso would make a significant profit, which he would share with Mr. Nguyen. After further discussion, Mr. Nguyen agreed to loan Mr. Tambosso the Bitcoin: Decision at paras. 20-27.
- [19] The judge found the parties entered into an agreement ("First Contract") on September 21, 2021, with key terms that I paraphrase as follows:
- a) Mr. Nguyen was to send 18 Bitcoins directly to the third party on Mr. Tambosso's behalf;
 - b) Mr. Tambosso was to return the loan amount after 48 hours (the "Waiting Period"), whether or not the Bypass Procedure succeeded;
 - c) Mr. Nguyen was not responsible for any act or omission of the third party receiving the loan, or any other third party; and
 - d) If the Bypass Procedure was successful, Mr. Tambosso would pay Mr. Nguyen an additional 1750 Bitcoin.
- [20] Later that day, Mr. Nguyen transferred 18 Bitcoins to the third party as described in the First Contract. Soon after, Mr. Tambosso requested more Bitcoins from Mr. Nguyen: Decision at paras. 34-35.
- [21] The judge found that on September 22, 2021, the parties entered into a second written agreement ("Supplementary Contract" and collectively, "Contracts"). The Supplementary Contract adopted the terms of the First Contract with additional terms about a second Bitcoin transfer. Mr. Nguyen then transferred an additional 4 Bitcoins to the third-party account: Decision at paras. 38-39.
- [22] After the Waiting Period expired, Mr. Tambosso did not repay Mr. Nguyen.
- [23] In this Court, Mr. Tambosso advances the same arguments he made to the chambers judge. He says there were no contracts between himself and Mr. Nguyen because:
- a) he made two deletions to the First Contract and initialed them, but Mr. Nguyen did not initial those changes in response, so the First Contract was really a counter offer that Mr. Nguyen never accepted; and

b) the Supplementary Contract was not valid because he signed it, but Mr. Nguyen did not.

[24] The judge rejected both arguments:

[44] These arguments are unpersuasive. The two deletions in the First Contract only refer to minor matters and do not alter the substance of it. Indeed, one of the deletions was to only cross off a duplicated word. Further, the fact that Mr. Nguyen did not sign the Supplementary Contract is of no moment, much the same as the signature of a creditor is not needed on a promissory note. To a large degree, the Supplementary Contract simply adopts the First Contract. In any event, Mr. Nguyen's agreement to the terms of the Supplementary Contract are established by his later sending of 4 Bitcoins in accordance with its provisions.

[25] The judge made no reviewable error in her conclusions. The changes made by Mr. Tambosso to the First Contract did not alter its essential terms. The other change Mr. Tambosso made was to cross out the phrase "whatsoever under the terms of this letter" so that the provision read "Mr. Tambosso agrees that Hung Nguyen will have no liability".

[26] Contrary to Mr. Tambosso's submission that the Supplementary Contract is invalid because Mr. Nguyen did not sign it, acceptance of an offer can be implied from the receiving party's conduct and the surrounding circumstances: *Remington Energy Ltd. v. British Columbia Hydro & Power Authority*, 2005 BCCA 191 at para. 31, citing *Saint John Tug Boat Co. Ltd. v. Irving Refinery Ltd.* (1964), 46 D.L.R. (2d) 1 at 7, [1964] S.C.R. 614; *Owners, Strata Plan LMS 3905 v. Crystal Square Parking Corp.*, 2020 SCC 29 at paras. 29-30.

[27] The test is objective, whether a reasonable person would believe he was consenting to the terms proposed by the other party: *Agent E v. Canada (Attorney General)*, 2021 BCCA 102 at paras. 17-22.

[28] Mr. Tambosso relies on cases that he cites as follows: "*Felthouse v. Bindley* (1862), 11 CB (NS) 869; *May & Butcher Ltd. v. The King*, [1934] 2 KB 17; *Eliason v. Henshaw*, (1819) 4 Wheaton 225; and *Uber v. Heller*, 2000 SCC 6" for general propositions that do not apply in this case.

[29] Mr. Tambosso also argues here, as he did below, that the Contracts allocated the risk associated with the Bypass Procedure to Mr. Nguyen, not him. He says Mr. Nguyen was investing in a high-risk venture, and that repayment of the loan was predicated on its success, so he only had to repay the loan if the Bypass Procedure worked. The chambers judge rejected this argument as obviously untenable in light of the language of the Contracts, which expressly allocated that risk to Mr. Tambosso. I agree. The judge's conclusions on the issues of contract formation and its terms are clearly supported by the evidence and contain no extricable error of law or palpable and overriding error.

[30] I reach the same conclusion on the prospects of success of Mr. Tambosso's third ground of appeal. With respect to the defense of mistake, the mistake must relate to the subject matter of the contract. The mistake Mr. Tambosso advances is that both he and Mr. Nguyen mistakenly believed the Bypass Procedure was legitimate. However, as the judge found, the

Contracts expressly allocated the risk that the Bypass Procedure might fail to Mr. Tambosso, regardless of the reason for its failure: Decision at paras. 48-51. The cases on which Mr. Tambosso relies do not say otherwise.

- [31] With respect to frustration, I agree with the chambers judge that this doctrine does not apply here for the same reasons that mistake is not available. Frustration only occurs where a situation arises for which the parties have not provided in the contract, so that performance is radically different from what the parties contemplated: *Naylor Group Inc. v. Ellis-Don Construction Ltd.*, 2001 SCC 58 at para. 53. Here, the Contracts contemplated and provided for the risk the Bypass Procedure would fail. Mr. Tambosso argues that the Bypass Procedure failed due to unforeseeable fraud. However, what is relevant to frustration is whether the parties contemplated the possibility the Bypass Procedure would fail; they did not have to contemplate all the reasons why it might fail.
- [32] Finally, with respect to third-party fraud and duress, Mr. Tambosso argues that the impact of the third-party fraud nullified his consent to the Contracts. He argues he was subject to coercive, psychological manipulation that constituted duress and negates his consent. The cases on which he relies do not establish that duress on a contracting party imposed by a third party, rather than another contracting party, can amount to duress. For example, in *NAV Canada v. Greater Fredericton Airport Authority Inc.*, 2008 NBCA 28 at para. 62, the Court commented:

... A person who puts a gun to my head and demands my wallet should be in no better a legal position because he or she is acting in response to a third person who placed a gun against his or her head. I am still entitled to be restored to the position I was in before the gun was put to my head. My wallet must be returned despite the good faith exercised by my coercer.

- [33] Contrary to the situation alleged in *Rose-Terra Investments Inc. v. Chetti*, 2024 ONCA 427, Mr. Nguyen did not take advantage of Mr. Tambosso knowing he was under duress.
- [34] In summary, the judge made no reviewable error in rejecting the defenses advanced by Mr. Tambosso. This ground of appeal also has no prospect of success.
- [35] In my view, all of Mr. Tambosso's arguments about the merits of his appeal proceed from the premise that he was the victim of a complex cryptocurrency fraud and the law should afford him a remedy by relieving him of his contractual obligations to Mr. Nguyen. He says:

The trial judgement reflects a structural failure in applying traditional legal standards to a case rooted in digital fraud and systemic deception. Courts have long recognized the need to evolve doctrine alongside the platforms in which contracts are written and performed.

- [36] He submits, as he did in the court below, that he was a "digital hostage" in relation to third parties operating a fraudulent, "technologically engineered scam" in the cryptocurrency domain. He argues that these circumstances warrant interpreting established doctrines, such as mistake, frustration and duress very differently when cryptocurrency is the subject matter of a contract.
- [37] I agree with the chambers judge that Mr. Tambosso was likely the victim of a nefarious scheme involving cryptocurrency. However, as she found, the complexity of cryptocurrency does not mean that all contracts involving cryptocurrency are necessarily complex or that contract law doctrines must change dramatically to respond to them. The Contracts here were straightforward loan agreements, and the judge made no reviewable error in characterizing them as such.
- [38] I conclude that Mr. Tambosso has not met the low merits threshold.
- [39] It remains to consider the interests of justice. I appreciate that Mr. Tambosso has put a great deal of time and effort into his arguments and that the appeal is of great importance to him. However, the arguments Mr. Tambosso has advanced are essentially an attempt to relitigate the issues. An appeal is not a rehearing.
- [40] Mr. Tambosso's approach to the appeal is concerning in other respects. In the "principles applied" portion of his written argument, he includes quotations from cases. In fact, they are not quotations and frequently do not stand for the proposition he asserts. For example, at para. 79, the following quote is attributed to *Barton v. Armstrong*, [1973] UKPC 27: "Consent void if induced by coercion even from third party". The case does not contain that quote and does not stand for that proposition. At the hearing, he acknowledged he has not read all the cases on which he relies.
- [41] Applying the Davies factors, Mr. Tambosso has not provided a satisfactory explanation for his significant delay in proceeding with the appeal. The prejudice to Mr. Nguyen is very significant. Even on the very low merits threshold, his appeal has no chance of success. While I am mindful that the consequence of not granting an extension will bring the appeal to an end, this is the rare case where the interests of justice support that outcome.
- [42] I conclude it is not in the interests of justice to grant an extension of time. That means the appeal will be dismissed as abandoned.

Should Portions of the Application Book be Sealed?

- [43] In the court below, Mr. Tambosso applied to have portions of the record sealed and have a closed courtroom. The chambers judge denied these requests. In this Court, he also seeks a sealing order in the following terms:

The sealing or redaction of sensitive portions of the application book and appeal record that identify the Appellant's personal data, financial losses, psychological impacts, and reputational damage.

- [44] The appellant asserts that this is necessary, "to prevent further irreparable harm arising from public dissemination of fraud victimization, including digitally traceable exhibits and scam email content that has already resulted in loss of professional standing and personal relationships".
- [45] A sealing order is discretionary and the bar for obtaining the order is high: *Sherman Estate v. Donovan*, 2021 SCC 25 at para. 34. Such orders will be granted only where necessary to prevent a serious risk to the proper administration of justice because reasonable alternative measures will not prevent the risk and the salutary effects of the order outweigh the deleterious effects on the rights and interests of the public as well as the parties: *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835, 1994 CanLII 39; *R. v. Mentuck*, 2001 SCC 76. Importantly, the risk of keeping the record unsealed must be shown to be a reality that is well grounded in the evidence, and the appellant must be specific about those grounds. Generalized assertions are not enough. Mr. Tambosso has not adduced evidence sufficient to satisfy this test except in respect of images of his current driver's license and passport.
- [46] Mr. Tambosso also invokes his Charter rights; however, those rights are not engaged because the parties are not state actors.

Disposition

- [47] The applications are dismissed. Page 97 of the respondent's materials shall be sealed.

"The Honourable Justice Iyer"

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/25/03/2025BCCA0338.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/tambosso-v-nguyen-2025>

Prepared on 26 October 2026 · Esheria