

CANADA / JUDGMENT

WestCorp Solutions Ltd. v. Lancaster

2019 BCCA 69

COURT

British Columbia Court of Appeal

DECIDED

20 February 2019

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2019 BCCA 69 WestCorp Solutions Ltd. v. Lancaster COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: WestCorp Solutions Ltd. v. Lancaster, 2019 BCCA 69 Date: 20190220 Docket: CA45339

Between: WestCorp Solutions Ltd. Respondent (Plaintiff) And Troy Lancaster, Coastal

Construction Management and Consulting and PSE Project Management Services Inc. Appellants

(Defendants) Before: The Honourable Madam Justice Newbury The Honourable Mr. Justice

Frankel The Honourable Mr. Justice Savage On appeal from: An order of the Supreme Court of

British Columbia, dated May 11, 2018 (WestCorp Solutions Ltd. v. Lancaster, 2018 BCSC 789,

Vancouver Docket S137146). Oral Reasons for Judgment No one appearing on behalf of the

Appellants Counsel for the Respondent: J.R. Lithwick Place and Date of Hearing: Vancouver,

British Columbia February 20, 2019 Place and Date of Judgment: Vancouver, British Columbia

February 20, 2019 Summary: Appeal dismissed as abandoned on failure of defendants to post

security as required by previous order.

- [1] NEWBURY J.A.: The plaintiff in this action seeks an order that the defendants' appeal be dismissed as abandoned, and costs of the appeal and trial. The defendants Mr. Troy Lancaster, Coastal Construction Management and Consulting, and PSE Project Management Services Inc. were found jointly liable in the court below for damages for breach of fiduciary duty in the amount of \$495,619 plus interest and costs.
- [2] The defendants appealed, but were ordered by Madam Justice Dickson to post security for the trial judgment and costs of trial and the appeal, pending which the appeal was stayed. They were given 90 days in which to post the security, after which the plaintiff would be entitled to seek an order dismissing the appeal as abandoned.
- [3] Madam Justice Dickson's order was made on November 2, 2018. The 90- day period expired without any payment being posted. No extension of time was sought. As pointed out by Ms. Lithwick, the onus is on the defendants to provide a reason for their non-compliance. They have not done so, nor have they appeared, and indeed, as I understand it, they have now consented to the order being sought.

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- [4] The criteria for the dismissal of an appeal as abandoned are well-known and were recently summarized in *Quinn v. Coutts* 2018 BCCA 433. We are satisfied that those conditions have been met. We note in particular that no substantive ground of appeal was put forward. As well, the plaintiff hopes to register and enforce the judgment in Texas. This can be done only if the court in Texas is satisfied that the judgment is a final one.
- [5] In the circumstances, I would dismiss the appeal as abandoned, with costs to the plaintiff.
- [6] FRANKEL J.A.: I agree.
- [7] SAVAGE J.A.: I agree. "The Honourable Madam Justice Newbury"
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