

CANADA / JUDGMENT

Wiebe v. Gunderson

2004 BCCA 241

COURT

British Columbia Court of Appeal

DECIDED

27 April 2004

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2004 BCCA 241 Wiebe v. Gunderson COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Wiebe v. Gunderson, 2004 BCCA 241 Date: 20040427 Docket: CA031213 Between: Linton Keith Wiebe and Linda Yvonne Wiebe Respondents (Plaintiffs) And Donald Charles Gunderson and Arlene Faith Gunderson Appellants (Defendants) Before: The Honourable Madam Justice Southin The Honourable Mr. Justice Donald The Honourable Mr. Justice Hall Oral Reasons for Judgment D.R. Clark Counsel for the Appellants G.S. McAlister Counsel for the Respondents Place and Date: Vancouver, British Columbia 27 April 2004

- [1] SOUTHIN, J.A.: This is an application to review an order of Mr. Justice Low pronounced the 7th April of this year dismissing the motion of the appellants for an order that the stay of execution pronounced by the Honourable Mr. Justice Low on the 9th October 2003 and entered on 15th January 2004 be varied to permit the appellants to access additional funds to pay legal fees and disbursements in connection with the appeal. Before Mr. Justice Low the amount which was sought was some \$135,000.
- [2] I need not go into any length to the circumstances of this case, save to say these few things. The plaintiffs below obtained a very substantial judgment against the defendants below arising out of alleged fraud on the sale of certain agricultural property. The trial apparently took over a month. Consequent upon the plaintiffs' success below they, of course, proceeded to execution against the various assets of the defendants.
- [3] That led to an application for a stay and Mr. Justice Low's order of the 9th October 2003 which was referred to in the notice of motion which came on before him. In that order, which is extensive, among other things, counsel for the appellants were to receive \$100,000 from certain monies paid into trust by way of a retainer to prosecute this appeal.
- [4] The matter came on again before Mr. Justice Low because the \$100,000, which was thought to be an appropriate budget for the appellants, apparently has been exhausted.
- [5] Now Mr. Clark comes and tells us that if some \$40,000 is released that the appellants will be able to be represented by counsel, although his first position is that the amount sought before Mr. Justice Low in the first instance is the amount that should be permitted to be paid out of the funds in trust.

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- [6] We have therefore here a change in circumstances. It does not seem to me to be in the interest of these parties that this matter should be remitted to Mr. Justice Low to enable him to address what was called during argument this morning the appellants' fall-back position. That only adds to the already astonishing costs which this case has brought upon both sides.
- [7] In light of that change of circumstances I would order that the sum of \$40,000 be paid out to Davis & Company to fund this appeal, and to that extent vary the order pronounced by Mr. Justice Low.
- [8] DONALD, J.A.: I agree.
- [9] HALL, J.A.: I agree. "The Honourable Madam Justice Southin"
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