

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Moore v. Cheung*,
2025 BCCA 97

Date: 20250325
Docket: CA49344

Between:

Wayne Moore

Appellant
(Petitioner)

And

Kevin Cheung

Respondent
(Respondent)

Before: The Honourable Madam Justice Bennett
(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated
September 13, 2023 (*Moore v. Cheung*, Vancouver Docket S235747).

The Appellant, appearing in person:

W. Moore

Counsel for the Respondent:

P.A. Kressock

Place and Date of Hearing:

Vancouver, British Columbia
March 14, 2025

Place and Date of Judgment:

Vancouver, British Columbia
March 25, 2025

Summary:

The appellant applies to have his appeal removed from the inactive list. The appeal is from an order denying an interim stay of an order of possession in a tenancy dispute. The judicial review of the Residential Tenancy Branch decision has since been heard, and the appellant here has appealed the final order to this Court. He has obtained a stay of the order in the substantive appeal. Held: The application to reinstate the appeal is dismissed. The delay has been significant, and the appeal is now moot. The substance of the dispute is addressed by the appellant's related appeal of the final order. It is not in the interests of justice to reactivate the appeal.

Reasons for Judgment of the Honourable Madam Justice Bennett:

[1] This is an application by the appellant, Mr. Moore, to reactivate his appeal under R. 50(3) of the *Court of Appeal Rules*, B.C. Reg. 120/2022. In Court, Mr. Moore also presented an unfiled "urgent application" requesting a number of orders listed below:

1. An Order that this urgent application be accepted and heard, on a without prejudice basis, before any other application is heard requiring the Law firm, Lawson Lundell, LLP to seek leave as they do not have any evidence of a back-flow event occurring and no evidence of damages actually occurring. Otherwise, these orders 1 to 11 be read in as official submissions of the Appellants for the application of 14 March 2025 which is peremptory on Mr. Moore (and Tremaine).
2. Order that a stay be imposed allowing an investigation of lawyers and legal assistants who continue to state that remediation or restoration work is required, when it is renovation work due to an outdated unit.
3. To have the Appeal CA49344 removed of the inactive list permitting a stay until the Appeal is heard.
4. An Order to stay all proceedings allowing the RTB Director to investigate that has been escalated by the RTB supervisor.
5. An Order that no evidence exists for a back-flow event occurring and no damages have occurred where that claim of damages of \$22,000 is part of an insurance fraud to blame the Appellants and have them evicted.
6. An Order that a stay be imposed until the Justice Bennett Order of February 7, 2025 is varied which includes Tremaine Moore to be included who is a Tenant being ignored by the Court.
7. An Order that the Respondent, Kevin Cheung complete the renovations as the unit is outdated and dilapidated for many years and this work is not restoration work or remediation work as there was no water damage when an overflow event did not in fact, occur. It is, renovation work.
8. An Order for the Appellants seeking a stay under section 35 (1) (c) (i) of the Court of Appeal Act upon the Appeal being reactivated.

9. An Order requiring that Mr. Tom Boyd appear and be summoned to Court and not send other lawyers as a means to conceal the fraud through denial.
10. Appellants seek a stay of one month to provide an opportunity for all legal assistants to withdraw, replace or correct the fraudulent affidavits to avoid criminal charges.
11. Appellants seek an Order that Mr. Moore has been complying with Justice Horsman's Order well before it was made, requiring the Respondent's to upgrade the unit which makes the application to lift the stay on two days Notice, redundant.

[2] One of the requests, #3, relates to the relief sought in this application. Another, #6, relates to amending the style of cause in the related appeal (CA50328). I advised Mr. Moore that I did not have jurisdiction in the context of this application to order any of the other matters he sought. Amending the style of cause is not, as I advised Mr. Moore, an urgent application. I did not permit him to file the application in the court room.

Background

[3] This appeal arises out of a residential tenancy dispute between Mr. Moore, the tenant, and his landlord, Mr. Cheung.

[4] In May 2023, Mr. Cheung issued a notice to end Mr. Moore's tenancy on a number of bases, including failure to pay rent, and damage to the unit allegedly caused by Mr. Moore. After a hearing in June 2023, the Residential Tenancy Branch issued an order of possession for the unit to Mr. Cheung in August 2023. Mr. Moore commenced judicial review proceedings, and sought an interim stay of the order of possession.

[5] The order being appealed from in this application is the September 13, 2023 order of Justice Milman refusing to grant a stay of the order of possession and lifting an interim stay then in place.

[6] This appeal was launched on September 14, 2023. Mr. Moore was granted a stay of the order of possession in this Court on September 21, 2023 by Justice Horsman. The stay expires upon the disposition of this appeal.

[7] Mr. Moore's petition for judicial review was subsequently heard and decided by Justice Baker in December 2024. Mr. Moore has also appealed that decision. In the context of that appeal, I granted a stay of the order of possession subject to certain conditions including that Mr. Moore pay his rent as it becomes due.

[8] By consent, the appeal record was filed on May 14, 2024 and the appellant's factum and appeal book were filed on June 13, 2024. The respondent filed his factum and appeal book on July 15. For an unknown reason, the appeal was not set for hearing. As a result, it was placed on the inactive list on September 16, 2024, and Mr. Moore filed this application on November 7, 2024. I do not know the reason for the delay in bringing the application to reactivate the appeal before the Court. The appeal is dismissed as abandoned effective March 17, 2025.

Application to reactivate

[9] Under R. 50(1) an appeal is placed on the inactive list if a notice of hearing of appeal is not filed within one year after the notice of appeal was filed for the appeal or 60 days after the appeal is ready for hearing. In this case, the appeal was placed on the inactive list on September 16, 2024, as more than one year had passed since the notice of appeal was filed on September 14, 2023.

[10] Mr. Moore brings an application under R. 50(3) to remove the appeal from the inactive list.

[11] There is no rigid test to reactivate an appeal placed on the inactive list, but the following factors are relevant:

- the extent of the delay,
- the explanation for the delay,
- the existence of any prejudice arising from the delay, and
- the likelihood of success on appeal.

Kar Recovery, Ltd. v. KDA, 2004 BCCA 503 at paras. 23–24 (Chambers).

Extent of the delay

[12] Mr. Moore filed this application to reactivate the appeal about three weeks after the appeal was placed on the inactive list. The appeal would have been ready to be heard on July 22, 2024, when the last of the materials was filed. However, the application for reinstatement was not brought until March. The delay is significant.

Explanation

[13] Mr. Moore filed an affidavit sworn on November 7, 2024. He attributes the delay to disagreements with the lawyer who was assisting him. He also expressed delay due to difficulties with a lay person to whom he had paid to assist him with the appeal.

Prejudice

[14] Had I not made an order staying the order for possession in the context of the appeal from Justice Baker's decision, there would be prejudice to the respondent as a result of Horsman J.'s order. Thus, any prejudice flowing from the delay has been attenuated by subsequent events.

Merits of the appeal

[15] In this case, the substance of Mr. Moore's dispute is addressed by his related appeal, where he challenges Justice Baker's decision dismissing his petition for judicial review. His challenge of Justice Milman's order lifting an interim stay became moot when the final decision on the judicial review petition was pronounced.

I explained this to Mr. Moore.

[16] Where an appeal has become moot, it is generally not in the interests of justice that it be reactivated and allowed to proceed: *British Columbia (Attorney General) v. Koffman Estate*, 2019 BCCA 444 at para. 24 (Chambers); *Gong v. Zhang*, 2023 BCCA 235 at para. 17.

[17] This case is analogous to *Gong*, which involved an appeal of an interim adjournment decision in a tenancy dispute. Justice Skolrood in Chambers found that

there was no point to reactivating the appeal because it was clear that the substance of the dispute was addressed in the subsequent appeal of the final decision on judicial review. Mr. Moore currently benefits from a stay of the order of possession, with conditions, under his related appeal. There is no longer any practical utility in pursuing this appeal.

[18] Therefore, I refuse the application to reinstate the appeal.

Costs

[19] The respondent seeks an order for costs of the appeal fixed at \$1,000.

[20] Under s. 44(1) of the *Court of Appeal Act*, S.B.C. 2021, c. 6 a successful party is presumptively entitled to costs of the appeal, including all applications made in the appeal. Costs are typically assessed by the Registrar, but they may also be fixed by a justice: ss. 44(2), 46(1).

[21] However, this is not a situation where the respondent has been “successful” in the ordinary sense. The appeal stands dismissed as abandoned because subsequent events have overtaken. Justice Horsman found that Mr. Moore’s appeal from Justice Milman had merit, and Mr. Moore was successful before her in obtaining a stay of the order of possession pending appeal. In my view, this is not the appropriate case in which to order costs to the respondent. It is appropriate that each party will bear their own costs.

Conclusion

[22] The application to reinstate the appeal is dismissed.

[23] Each party will bear their own costs.

“The Honourable Madam Justice Bennett”