

In the Court of Appeal of Alberta

Citation: Debut Developments Incorporated v Redcliff (Town), 2025 ABCA 223

Date: 20250623
Docket: 2201-0318AC
Registry: Calgary

Between:

Debut Developments Incorporated

Appellant

- and -

The Town of Redcliff, Robert Hazelaar, and Randy Giesbrecht

Respondents

The Court:

**The Honourable Justice Jolaine Antonio
The Honourable Justice Bernette Ho
The Honourable Justice Kevin Feth**

Memorandum of Judgment

Appeal from the Order by
The Honourable Justice N.E. Devlin
Dated the 2nd day of December, 2022
Filed on the 7th day of December, 2022
(2022 ABKB 809, Docket: 1108 00105)

Memorandum of Judgment

The Court:

[1] This is an appeal of a decision to deny a request to adjourn the commencement of trial, with the consequence being that the plaintiff corporation (the appellant in this Court) did not have legal counsel retained to conduct the trial of the matter. The trial judge then dismissed the action for want of prosecution: *Debut Developments Incorporated v the Town of Redcliff*, 2022 ABKB 809 [Decision]. At the oral hearing before this Court, Danica Prpick, a shareholder of Debut Developments Incorporated (“**Debut**”), applied for and was granted a right of audience with the consent of the respondents.

[2] Debut is a privately held corporation with two individual shareholders, including Ms. Prpick. Debut planned and constructed a residential project in the Town of Redcliff (the “**Town**”). A series of disputes arose regarding the project, and Debut commenced an action in 2011 alleging malfeasance on the part of the Town and some of its officials that purportedly caused Debut to suffer monetary losses associated with the project (the “**Debut Action**”).

[3] There is a significant procedural history to this matter, much of which is irrelevant for the purposes of this appeal. What is important is that Debut has been represented by several different lawyers since the action was commenced. A trial originally scheduled to commence in December 2020 was adjourned *sine die* in August of that year when counsel for Debut was granted permission to withdraw. Debut has been ordered at various times to retain counsel, while other times, Ms. Prpick has been granted a right of audience to speak on behalf of Debut to deal with specific matters in advance of trial.

[4] On March 18, 2022, at the request of the case management judge, Debut filed an application asking that Ms. Prpick be granted leave to conduct the trial on behalf of Debut. In oral reasons for decision issued April 5, 2022, the case management judge dismissed Debut’s application pursuant to rule 2.23(4) of the *Alberta Rules of Court*, Alta Reg 124/2010 and section 106 of the *Legal Profession Act*, RSA 2000, c L-8.

[5] The case management judge noted there is a presumption that a corporation must be represented by a lawyer before the court, but that the court has the discretion to grant a right of audience to a non-lawyer to speak on behalf of a corporation in appropriate circumstances: *Vuong Van Tai Holding v Alberta (Minister of Justice and Solicitor General)*, 2020 ABCA 169 at para 15. The court considered the circumstances and observed, with respect, that Ms. Prpick had demonstrated “that she is very personally invested in this litigation, and it will be challenging for her to conduct the litigation in a [sic] orderly, professional and economical manner.” In addition, “if allowed to represent the corporation, a series of potential ill-thought out and late last minute

applications and communications will occur.” The case management judge stated that she was not confident that Ms. Prpick would be able to speak on behalf of Debut during the trial in way that respected the boundaries between the individuals who are granted the right of audience and other participants in the legal system. The case management judge concluded that the presumption that Debut as a corporation should be represented by counsel had not been rebutted. Thus, while Ms. Prpick was permitted to speak to an upcoming interlocutory application on behalf of Debut, the case management judge was clear in denying Ms. Prpick the right to conduct the trial on behalf of Debut.

[6] Notably, the case management judge’s April 5, 2022 order was not appealed.

[7] Approximately one month prior to the start of trial, Debut and Ms. Prpick applied for an adjournment. While the application was filed in Court of King’s Bench Action number 1608-00404¹, the remedies sought included, among other things:

1. An Order adjourning the November 28, 2022 to December 15, 2022 trial of Court of King’s Bench Action No. 1608-00404 and Court of King’s Bench Action No. 1108-00105. ...
3. An Order appointing Danica Prpick as a litigation representative for Joel Barrette and Danica Prpick’s interests as shareholders of Debut Developments Inc, in the Debut Action (No. 1108-00105) pursuant to rule 2.16.

[8] This application was heard as a preliminary matter before the trial judge at the beginning of the dates reserved for trial, over a day and a half. Debut still did not have a lawyer at that time, so Ms. Prpick was granted a limited right of audience to speak to the adjournment application with the consent of the respondents. During the first day of the adjournment hearing, counsel for the respondents took the position that the application for an adjournment should be denied, and that if no counsel was available to proceed with the action on behalf of Debut, the Debut Action should be dismissed. The court specifically drew this position to the attention of Debut, explained the implications, and allowed Debut time to prepare a response to be provided the following day. Ms. Prpick was also asked to be prepared to outline the core facts being relied upon giving rise to the causes of action being advanced by Debut.

¹ In Court of King’s Bench Action number 1608-00404, Randy Giesbrecht, Robert Hazelaar and Shanon Simon sued Danica Prpick in defamation as a result of comments made by Ms. Prpick in a January 2015 letter (the “**Defamation Action**”). The reasons for decision in the Defamation Action are reported at *Giesbrecht v Prpick*, 2024 ABKB 51.

[9] The trial judge issued an oral decision on December 1, 2022, which was published the following day. Debut's request for an adjournment was denied. Since Debut was unrepresented by counsel and unable to advance its claim, the claim was dismissed: Decision at para 75.

Grounds of appeal

[10] The appellant's main grounds of appeal appear to be that:

- a. The trial judge erred in denying the adjournments in various ways, including by denying the appellant procedural fairness, relying on improper evidence, failing to consider all relevant factors, and failing to consider the proper test to sever the actions; and
- b. The trial judge erred in dismissing the Debut Action, because there was no application for summary dismissal properly before the court, and that the relief was unfair in the circumstances.

The adjournment

[11] Rule 14.5(1)(b) of the *Rules* provides that permission to appeal is required for "any pre-trial decision respecting adjournments, time periods or time limits." Debut was specifically advised of this rule in a letter from this Court's case management officer on December 23, 2022, which noted permission to appeal must be sought as soon as possible, and failure to do so in a timely manner may result in that aspect of the appeal being dismissed.

[12] Rule 14.5(1)(b) applies even when the effect of the decision appealed may impact substantive rights: *Rath & Company Barristers & Solicitors v Sturgeon Lake Cree Nation*, 2022 ABCA 373 at para 10; *Stubicar v Calgary (Subdivision and Development Appeal Board)*, 2023 ABCA 133 at para 17-18. A failure to obtain prior permission when leave is required is a sufficient basis to dismiss an appeal and will not readily be cured by this Court during the appeal itself: *Sedgwick v Edmonton Real Estate Board Co-Operative Listing Bureau Limited (Realtors Association of Edmonton)*, 2022 ABCA 264 at paras 61, 78-85. This Court has declined to review a trial adjournment decision when permission has not been obtained: *Carbone v Whidden*, 2014 ABCA 300 at para 5. We find that permission to appeal was required, and that Debut failed to obtain the necessary permission. This ground of appeal is dismissed on that basis.

[13] Even if permission had been obtained, decisions respecting adjournments are "highly discretionary, and will not be disturbed on appeal unless it reflects an error of principle, a failure to consider a relevant factor, or it is wholly unreasonable:" *R v TML*, 2019 ABCA 176 at para 17; see also *1038055 Alberta Ltd v Khatri*, 2014 ABCA 421 at para 5.

[14] We are satisfied that the trial judge considered the correct legal framework in considering Debut's adjournment request, and the hearing unfolded in a procedurally fair manner. The record demonstrates the trial judge considered all relevant factors and gave Ms. Prpick an opportunity to address matters that were relevant to the required analysis, especially those of concern to him relative to Debut's position.

[15] He observed that the trial had already been adjourned before, and he noted the age and nature of the case. He expressed concern about the length of any ensuing delay resulting from a further adjournment to retain counsel, due to financial and other considerations. He also considered the prejudice that would be suffered by both Debut and the respondents, understanding that a denial of the adjournment would effectively mean that Debut's action would be dismissed without a trial on the merits of the allegations. After a detailed analysis, the trial judge concluded that an adjournment would not serve anyone's interests or the administration of justice. We are not persuaded that the trial judge committed a reviewable error in arriving at this conclusion and denying the adjournment request.

Dismissal of the action

[16] After denying the adjournment request, the trial judge held "[t]he necessary consequence of that finding is that Debut stands before this Court unrepresented and unable to advance its claim. Its action is accordingly dismissed." Decision at para 75. The appellant challenges this decision on various grounds, including that it was an error of law for the court to dismiss the claim absent an application for summary dismissal, Debut's consent, or an outstanding order requiring Debut to be represented by counsel.

[17] There is no merit to any of the appellant's arguments. The mere fact that an applications judge in 2017 ordered that the Debut Action and Defamation Action be tried together did not preclude the court from dismissing the Debut Action before trial. Similarly, an earlier order issued by the case management judge directing that trial of both actions occur on specified dates did not mean that the court could not issue further procedural orders to control its own processes. Contrary to the appellant's submission in oral argument, the principle of judicial comity does not apply in this circumstance.

[18] The Court of King's Bench has the inherent jurisdiction to control its own process, which includes the power to grant relief not expressly applied for by the parties in appropriate circumstances: *Judicature Act*, RSA 2000, c J-2, s 8; *Rules*, r 1.2-1.4; *Pyrrha Design Inc v Plum and Posey Inc*, 2016 ABCA 12 at paras 8-11. We agree that in the circumstances, the trial judge was correct to dismiss the Debut Action immediately because Debut did not retain counsel to

conduct the trial as previously ordered. We find it unnecessary to consider the trial judge's broader comments regarding the need for a corporation to retain counsel for trial in other cases.

Conclusion

[19] The appeal is dismissed. The respondents are awarded costs pursuant to Schedule C, Column 1 of the *Rules*.

[20] Rule 9.4(2)(c) is invoked, and the Court will prepare the resulting order or judgment.

Appeal heard on June 12, 2025

Memorandum filed at Calgary, Alberta
this 23rd day of June, 2025

Authorized to sign for: Antonio J.A.

Ho J.A.

Feth J.A.

Appearances:

Appellant, Debut Developments Incorporated

J.W. McCully
for the Respondents