

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Cressey Construction Corporation v.
Parolin,*
2025 BCCA 255

Date: 20250721
Docket: CA50683

Between:

Cressey Construction Corporation

Appellant
(Defendant)

And

Tracy Parolin

Respondent
(Plaintiff)

Before: The Honourable Mr. Justice Harris
(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated
April 23, 2025 (*Parolin v. Cressey Construction Corporation*, 2025 BCSC 741,
Vancouver Docket S233938).

Counsel for the Appellant:

N. Mitha, K.C.
E.S. White

Counsel for the Respondent:

S.T. Robertson
R. Poulus, Articled Student

Place and Date of Hearing:

Vancouver, British Columbia
July 15, 2025

Place and Date of Judgment:

Vancouver, British Columbia
July 21, 2025

Summary:

The applicant seeks a stay of execution of the order below. It says it will suffer irreparable harm because the respondent's modest financial resources raise a risk it will not be able to recover damages if its appeal is successful. It says that the fact the respondent's sole exigible asset is a property held in joint tenancy supports the irreparable harm, given the added transaction costs of executing against a property in joint tenancy.

Held: Application dismissed. The respondent has established that she has access to funds far in excess of the value of the judgment below, and as such the applicant's suggestion that it would not be able to recover damages if successful is purely speculative.

Reasons for Judgment of the Honourable Mr. Justice Harris:

[1] This is an application by the appellant, Cressey Construction Corporation ("Cressey"), to stay the execution of the order under appeal awarding damages and costs to the respondent, Ms. Parolin, following her successful claim for constructive dismissal.

[2] A stay of the order under appeal may be granted by a justice of this Court pursuant to s. 33(1) of the *Court of Appeal Act*, S.B.C. 2021, c. 6, where the applicant establishes that a stay is in the interests of justice, having regard to the test set out in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 at 334, 337, 1994 CanLII 117. The applicant must demonstrate there is some merit to the appeal, the applicant will suffer irreparable harm if the stay is refused and the balance of convenience favours the applicant in granting the stay: *Henry v. A.B.*, 2025 BCCA 180 (Chambers) at para. 8.

[3] The general principles governing a stay of execution are well known and were summarized by Justice Smith in *Gill v. Darbar*, 2003 BCCA 3 (Chambers):

[7] The applicable principles are not in dispute. Generally, a successful plaintiff is entitled to the fruits of the judgment but this Court may stay proceedings if satisfied that it is in the interests of justice to do so: *Voth Brothers Construction (1974) v. National Bank of Canada* (1987), 12 B.C.L.R. (2d) 43 at 44-45 (C.A. [In Chambers]). The trial judgment must be assumed to be correct and protection of the successful plaintiff is a pre-condition to granting a stay: *Morrison-Knudsen Co. v. British Columbia Hydro & Power Authority* (1976), 112 D.L.R. (3d) 397 at 404 (B.C.C.A.). The applicant for a

stay must satisfy the familiar three-stage test, that is, the applicant must show that there is some merit in the appeal, that the applicant will suffer irreparable harm if the stay should be refused, and that, on balance, the inconvenience to the applicant if the stay should be refused would be greater than the inconvenience to the respondent if the stay should be granted: *British Columbia (Milk Marketing Board) v. Grisnich* (1996), 50 C.P.C. (3d) 249 at 252 (B.C.C.A. [In Chambers]).

[4] Cressey submits that the appeal is meritorious, as the judgment below discloses a number of errors in principle and errors in law, specifically in the judge's interpretation of the unwritten employment contract between the parties and in finding that the respondent had not failed to mitigate her damages.

[5] It further says that, because of Ms. Parolin's financial situation, it would suffer irreparable harm if it had to pay the damages awarded because there is a serious risk that it would not be able to recover those damages on appeal.

[6] Finally, Cressey submits that the balance of convenience favours granting the stay, as it has proposed terms on which the stay should be ordered that would balance the parties needs while ensuring Cressey is not unable to recover damages if it is successful on appeal. Specifically, Cressey proposes to pay the full amount of the damages award, plus interest, into trust pending the outcome of the appeal and to pay Ms. Parolin her costs of the trial forthwith. Alternatively, if Ms. Parolin were to post a letter of credit securing the judgment, it would not object to paying the judgment to her out of the funds in trust. In substance, Cressey suggests that a "Voth" order would practically and fairly balance the interests of the parties, allowing Ms. Parolin to enjoy the fruits of her judgment while protecting Cressey should it be successful on appeal.

[7] Ms. Parolin takes the position that a stay is not warranted. She says that Cressey's speculation that she has no exigible assets is unfounded. She has deposed to having assets far in excess of the value of the damage award in the court below, and says that, for this reason, Cressey cannot establish irreparable harm capable of justifying a stay.

[8] As noted above, the onus rests with the party seeking a stay to satisfy me that all three prongs of the *RJR-MacDonald* test are met.

[9] The critical issue on this application is whether Cressey can show irreparable harm if the stay is not granted. This issue is reduced to the implications of the following facts. It is undisputed that Ms. Parolin has an interest in joint tenancy in her family home, with substantial equity and an available line of credit very significantly in excess of the value of the judgment. She has the financial ability to repay the judgment if the appeal is allowed.

[10] Should she fail to repay the judgment, Cressey would be required to seek to enforce repayment by executing against her joint interest in the property. This can be, I accept, a time consuming and costly process involving several steps. In principle, the costs and delays could erode the ultimate recovery so that the successful appellant is not made whole.

[11] Irreparable harm is “harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other”: *RJR-MacDonald* at 341. To establish irreparable harm on the basis that it would be difficult or impossible to collect damages if the appeal is successful, the applicant must show a “real risk” that it would be unable to recover damages, and this risk must be sufficiently material to justify depriving the successful plaintiff of the fruits of her judgment, in circumstances where the judgment is presumed to be correct: *Acciona Infrastructure Canada Inc. v. Allianz Global Risks US Insurance Company*, 2015 BCCA 6 (Chambers) at para. 8.

[12] An issue somewhat similar to the one in this application arose in *Hardy v. Graham*, 2023 BCCA 406 (Chambers). In that case, the risk of a failure of repayment arose in circumstances where the respondent’s only substantial asset was equity in a condominium in the amount of roughly double the judgment to be paid. Justice Skolrood (as he then was) reasoned that:

[32] The crucial point, however, is that even with the \$660,000 charge registered against title to the respondent’s property, she has ample equity to

cover the amount at issue in the appeal: approximately \$340,000. The respondent also deposes that there is significant additional room on her line of credit. While her vague reference to “significant other financial assets” lacks specificity and is therefore unhelpful in the analysis, I nonetheless am satisfied that she has ample resources to repay the amount in issue if the appellants succeed on the appeal.

[33] Accordingly, the appellants have not shown a material risk of non-recovery so as to establish that they will suffer irreparable harm if a stay is refused. In my view, this is sufficient to dismiss the stay application.

[13] Although Justice Skolrood accepted it was unnecessary to address the balance of convenience he commented helpfully:

[36] Discerning the balance of convenience requires a weighing of the parties’ competing interests to determine “which of the two parties will suffer the greater harm” if I were to grant or refuse a stay of the injunction pending the outcome of the appeal: *RJR-MacDonald* at 341–342, 344.

...

[38] The appellants argue that the respondent stands to suffer no prejudice at all from the stay. The additional funds that are in dispute would be held in trust and made available to the respondent in the event the appeal is dismissed.

...

[41] In my view, the balance of convenience is directly linked to the question of whether there is a risk that, should the appellants be successful on the appeal, they will not be able to recover the money paid.

[42] For the reasons I have already discussed, I am satisfied that this risk is unlikely to materialize, and therefore the appellants stand to suffer little to no inconvenience if they are not granted a stay.

[43] The respondent, by contrast, will continue to be kept from funds that she, at least for now, is entitled to according to the judgment below. ...

[14] In response to the suggestion that he make a “Voth Order”, he said:

[47] In my view, a Voth Order is not appropriate for the same reasons that I have denied the stay application. The appellants have failed to demonstrate the risk that the respondent will be unable to pay. That being the case, the question is which party has the better right to the disputed funds in the meantime: *Voth Bros. Const. (1974) Ltd. v. Nat. Bank of Can.*, 1987 CanLII 2716 (B.C. C.A.), at para. 3. Given the respondent’s success in the court below, she is entitled to the funds pending resolution of the appeal.

[15] I accept that in the case before me the added complication is that execution against the joint tenancy would be more complicated, expensive and time

consuming than executing against an interest in real property registered to one owner. Nonetheless, I find the reasoning of Justice Skolrood persuasive. Cressey has not established a risk of non-recovery rising to a sufficient degree of materiality to warrant granting a stay.

[16] Ms. Parolin has the ability to repay the judgment. I am not prepared to assume that she would defy a legal obligation to repay the judgment if the appeal is allowed. If anything, I think I should presume that she will fulfill her obligation to do so. The suggestion that it will be necessary to resort to execution proceedings is speculative. Even if it were to turn out to be necessary to enforce the obligation to repay the judgment, I am not persuaded that the transaction costs and time involved in doing so rises to a level supporting a material risk of irreparable harm sufficient to deprive Ms. Parolin of the fruits of her judgment. I would not order a stay, and, for the reasons given by Justice Skolrood, quoted above, I would also not make a Voth Order.

[17] The application is dismissed.

“The Honourable Mr. Justice Harris”