In the Court of Appeal of Alberta

Citation: ATB Financial v 1719091 Alberta Ltd, 2025 ABCA 338

Date: 20251017
Docket: 2503-0135AC
Registry: Edmonton

Between:

ATB Financial

Respondent

- and -

1719091 Alberta Ltd., Clearwater Radiator Inc., Edgewood Products Inc., and Michael David Coe

Applicants

Reasons for Decision
of the Honourable Justice Kevin Feth

Application for Permission to Appeal Decision

Reasons for Decision
of the Honourable Justice Kevin Feth

Overview

[1] The applicants, Michael David Coe, 1719091 Alberta Ltd, Clearwater Radiator Inc, and Edgewood Products Inc, seek permission to appeal my decision denying them extensions of time to appeal an order restricting them from initiating steps in the lower court action and an order granting a receivership over 1719091 Alberta Ltd: ***ATB Financial v 1719091 Alberta Ltd***, 2025 ABCA 291 ("Decision").

[2] For the reasons below, the application is dismissed.

Background

[3] The procedural history of this matter is set out in the Decision and does not need to be recanvassed in detail. Briefly, Mr Coe owns 1719091 Alberta Ltd, Clearwater Radiator Inc, and Edgewood Products Inc. 1719091 Alberta Ltd borrowed money from ATB Financial, with the debt secured against industrial real property ("Industrial Property"). The debt was also guaranteed by Clearwater Radiator Ltd, Edgewood Products Inc, and Mr. Coe personally. 1719091 Alberta Ltd fell into arrears on its repayment and ATB Financial was granted a consent judgment against the applicants in the amount of $1,464,241.94 plus interest. ATB Financial began the process to foreclose on and sell the Industrial Property.

[4] ATB Financial obtained a redemption order setting a deadline for the debt to be repaid, failing which the Industrial Property would be sold. The applicants purported to pay the debt through Organized Pseudolegal Commercial Argument (OPCA) strategies, being contrivances to avoid payment. ATB Financial did not accept those steps as legitimate methods of payment.

[5] Given the non-payment, the court below granted an order allowing the Industrial Property to be sold. The applicants were uncooperative with the process, leading to two applications by ATB Financial.

[6] The first was to have the applicants declared vexatious litigants and to impose court access restrictions on them. While the vexatious litigation application was unsuccessful, an order was granted prohibiting the applicants from commencing any application, action, or appeal in the Court of King's Bench without leave from the Associate Chief or his designate ("Restricted Access Order"). The applicants must post $10,000 with the Clerk of the Court as a cash security where leave is sought.

[7] The second was to appoint a receiver/manager over the assets of 1719091 Alberta Ltd, which was granted ("Receivership Order").

[8] Mr Coe applied in the court below for an emergency injunction staying the Receivership Order and prohibiting its enforcement. The court declared the application a nullity because Mr Coe did not comply with the prerequisites to filing outlined in the Restricted Access Order. He also filed a further application in the court below for leave to "appeal" the Receivership Order. That application was also struck for failing to follow the prerequisites in the Restricted Access Order.

[9] The applicants then applied to this Court seeking: an extension of time to appeal the Restricted Access and Receivership Orders, permission to appeal the Orders, and a stay of enforcement of the Orders pending appeal. I dismissed the application for extensions of time because the applicants did not demonstrate special circumstances excusing or justifying their significant delay in commencing their appeals, the delay is likely prejudicial to finality and ATB Financial's recovery of the debt, and the applicants have no reasonable chance of success on appeal.

[10] The decision to exercise my discretion by not allowing the extensions of time made any consideration of the requests for permission to appeal and a stay of the orders unnecessary.

Test for permission to appeal a decision of a single appeal judge

[11] This application for permission to appeal to a three-member panel from a decision of a single appeal judge comes before me pursuant to Rules 14.5(1)(a) and 14.5(2) of the *Alberta Rules of Court*, Alta Reg 124/2010. Permission must be obtained from the same judge who made the decision that is to be appealed: Rule 14.5(2).

[12] Permission to appeal a decision of a single judge of the Court of Appeal is granted only in rare instances. It is an "extraordinary exercise" of judicial authority, and the applicants must demonstrate "compelling reason to require the applicant and respondent to reargue and three judges of the Court of Appeal to decide an issue" (emphasis in original): ***Ouellette et al v Law Society of Alberta***, 2021 ABCA 283 at paras 9, 14. Permission will not be granted where the applicants merely seek a rehearing of the same arguments that were previously rejected.

[13] The test for determining whether permission should be granted to appeal a single appeal judge's decision was set out in ***Al-Ghamdi v Alberta***, 2016 ABCA 403 at para 10 [***Al-Ghamdi***]. The burden is on the applicants to show that the order of the single judge being reviewed either:

1) raises a question of general importance that, on its own, is deserving of panel review;
2) rests on a reviewable and material issue of law that is worthy of panel review;
3) involves an unreasonable exercise of discretion that had a meaningful effect on the outcome of the decision, and the outcome is worthy of panel review; or

4) rests on a palpable and overriding error of important facts, which affects the order and makes it worthy of panel review.

[14] This is not an exhaustive list, and other factors may be considered such as whether conflicting decisions exist on the point, the standard of review to be applied, or "other good reasons" that would justify full panel review: ***Alberta Health Services v Wang***, 2017 ABCA 261 at para 5 [***Alberta Health***]. Here, the application for permission to appeal must derive from the order denying the applicants' extension of time applications, and not from a previous decision or order. Discretionary decisions, such as this one, are less likely to result in permission to appeal, particularly where "timing or logistics are the issue": ***Carbone v Whidden***, 2015 ABCA 177 at para 30; ***Can v Alberta Securities Commission***, 2023 ABCA 47 at para 14.

Analysis

[15] The applicants' submissions do not expressly address the factors outlined in ***Al-Ghamdi*** or ***Alberta Health***. They briefly argue the merits of several proposed grounds for appeal but do not address the balance of the factors underlying my exercise of discretion in refusing their request for extensions of time, including their failure to demonstrate special circumstances excusing or justifying their significant delay in commencing their appeals and likely prejudice to ATB Financial. As the Decision involved an exercise of discretion, it would be owed deference on appeal.

[16] As for the merits of the proposed grounds of appeal, no argument is presented or evidence identified of a serious issue justifying additional review by a full panel of the Court of Appeal. The applicants largely reiterate the same arguments advanced in support of the initial application for extensions of time. My previous reasons are not fully repeated here.

Issue 1: Reliance on unsworn materials and late evidence

[17] The applicants' primary new argument is that I relied on a report from the receiver for 1719091 Alberta Ltd that was unsworn and therefore inadmissible evidence. The receiver swore and filed an affidavit a few weeks after the previous application hearing attesting to the accuracy of the report's contents. The applicants assert that I imposed a deadline for the receiver to provide the affidavit by the end of the hearing date, but he failed to comply. The applicants also complain that they were provided with no opportunity to respond to the report's contents.

[18] The receiver provided an unsworn report to this Court and the parties in advance of the previous hearing before me. Such reports are routinely provided by receivers in the Court of King's Bench, without being supported by an affidavit, because receivers are typically appointed as officers of the court and their information is generally considered reliable. Here, paragraph 33 of the Receivership Order stated: "unless otherwise ordered by this Court, the Receiver will report to

the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence."

[19] At the hearing, the applicants raised a technical objection that the report was not sworn evidence, and no order of this Court permitted the report to be received as evidence in an unsworn form. The objection was resolved through the receiver's agreement to provide an affidavit in this Court attesting to the accuracy of the report's contents. The applicants expressly confirmed that such an affidavit would fully address their concerns. No other objection was raised about the report. The applicants did not contest the contents or seek an adjournment to file further evidence. Contrary to the applicants' current assertion, no filing deadline was imposed for the receiver's affidavit. The affidavit was filed before the Decision was released.

[20] I find that the applicants suffered no prejudice. Reliance on the report was consistent with the applicants' acknowledgments before me. Further, even now, they do not identify any inaccuracies in the report. No procedural or substantive unfairness arose. There is no reviewable and material issue of law, or question of general importance that is worthy of panel review.

Issue 2: Dismissal of securitization evidence as OPCA without analysis

[21] The applicants contend that documentary evidence was previously submitted showing that ATB Financial assigned, "securitized" or sold the loan. They argue that ATB no longer held the debt and therefore had no standing to seek remedies for the non-payment. The applicants object to this argument being characterized as an OPCA strategy.

[22] As noted in paragraph 53 of the Decision, similar arguments about loan securitization have been recognized repeatedly by the courts as OPCA strategies. The argument is frivolous. No basis is shown for rearguing the issue before a full panel of the Court of Appeal.

Issue 3: Defective email service and the requirement of actual notice

[23] The applicants argue service was not effective. They claim that they did not consent to email service and were not made aware of the legal action against them until the Orders were made.

[24] As noted in paragraph 51 of the Decision, a substitutional service order was granted, and the applicants were served in accordance with that order. The substitutional service order was not appealed. The applicants cannot use their proposed appeal as a collateral attack to challenge the validity of that order. No arguable issue arises about a reviewable and material error of law, a question of general importance, palpable and overriding error of important facts, an unreasonable exercise of discretion, or another good reason for a full panel to review this proposed ground.

Issue 4: OPCA, vexatious labels and the denial of procedural fairness

[25] The applicants object to their materials and some arguments being characterized as OPCA strategies, with past filings in the court below being described as an abuse of process. They argue that no finding was ever made that they are vexatious litigants. In their view, their legal arguments were stigmatized and not afforded due consideration.

[26] While the applicants were not declared vexatious litigants, their arguments were repeatedly found to be without merit and sometimes frivolous. The reasons supporting the Restricted Access Order found that Mr Coe engaged in "abusive litigation activities", "OPCA money-for-nothing and debt elimination strategies", "pseudolaw concepts and strategies", and "problematic OPCA litigation": ***ATB Financial v 1719091 Alberta Ltd***, 2024 ABKB 461. However, a vexatious litigant finding was not made because Mr Coe's conduct was limited to the underlying action. The reasons at paragraph 21 concluded: "While there is no question that Mr Coe has, as an active Defendant in this proceeding, engaged in pseudolaw concepts and strategies, he has done so in a comparatively narrow manner, especially when compared with other persons who have deployed these non-law concepts."

[27] The conclusion that the applicants were not vexatious litigants did not immunize their arguments and strategies from an OPCA characterization. More fundamentally, the merits of their arguments were considered. They still have not identified an arguable issue warranting a review by a full panel of this Court.

Issue 5: Registry contamination and judicial supplementation of the record

[28] A publication ban was initially placed on the appeal file in error by the Registry but later removed. The applicants submit that the Decision relied on and referenced registry materials that were not part of the evidentiary record. The applicants do not identify any of the material but assert that it "contaminated the record."

[29] The applicants do not explain how the (removed) publication ban resulted in any prejudicial material appearing within the file, nor do they identify the specific material. No particulars are provided for this argument. No arguable issue arises about a reviewable and material error of law, a question of general importance, palpable and overriding error of important facts, an unreasonable exercise of discretion, or another good reason for a full panel to review the proposed ground of appeal.

Issue 6: Misapplication of the balancing of prejudice test

[30] The applicants argue the Decision erred in finding that an extension would prejudice ATB Financial. The applicants assert there was a misapplication of the test, and that where fundamental rights are at issue, finality cannot take priority over fairness. Mr Coe in particular contends he has

shown irreversible prejudice because of the seizure and disposal of his property, the loss of his business and livelihood, and an inability to pay $10,000 in security.

[31] The applicants are merely rearguing the issue that was already fully addressed in the Decision. In any event, finality was not treated as a determinative factor nor given undue weight in the exercise of my discretion. A review by a full panel is not warranted.

Issue 7: The $10,000 security/leave condition is unlawful in application

[32] The applicants contend that the $10,000 security requirement imposed as a prerequisite to filing applications, actions, and appeals in the court below is a financial barrier preventing them from accessing the courts and exercising their rights.

[33] This issue was fully explored in the Decision. The applicants are seeking to reargue the same points. Moreover, as noted in the Decision at paragraph 41, the applicants did not previously assert or provide any evidence that the $10,000 security requirement created an insurmountable financial barrier to court access.

Issue 8: Canadian Charter of Rights and Freedoms and Alberta Bill of Rights considerations

[34] The applicants argue ATB Financial is a provincial institution that attracts *Charter* oversight, where it acts as an agent of the Crown. The applicants contend their *Charter* arguments were not adequately addressed in the Decision.

[35] This issue was canvassed in the Decision. The applicants are seeking to relitigate the same points, which have no arguable merit.

Conclusion

[36] The applicants' submissions do not demonstrate the interests of justice would be served by granting further review of this matter by a full panel of the Court of Appeal. They do not raise a question of general importance or an error of law warranting further review. There was no arguably unreasonable exercise of discretion, no misapprehension of the relevant facts, and no other reason provided that would warrant a further review by a panel of this Court.

[37] Permission to appeal is denied.

[38] The successful party is entitled to a costs award against the unsuccessful party, unless the court otherwise orders: Rule 14.88(1).

[39] As explained in the Decision, ATB Financial is entitled to the measure of costs specified by the security instrument. The written submissions responding to this application seeking permission to appeal again reflect that ATB Financial has been efficient. The applicants shall pay costs on a solicitor and own client (full indemnity) basis, subject to and payable after assessment.

[40] Rule 9.4(2)(c) is invoked. The Court will prepare the Order.

Written submissions filed on September 24 and October 14, 2025.

Memorandum filed at Edmonton, Alberta
this 17th day of October, 2025

Feth J.A.

Appearances:

T.L.F. Gusa
K.P. Letwin
for the Respondent

Applicant M.D. Coe

Applicants 1719091 Alberta Ltd, Edgewood Products Inc
and Clearwater Radiator Inc (limited audience)

D. Legeyt
for the Receiver, BDO Canada Limited (no submissions)