

# COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *611481 BC Ltd. v. Graham Construction  
and Engineering (1985) Ltd.*,  
2023 BCCA 414

Date: 20231114  
Docket: CA49349

Between:

**611481 BC Ltd.**

Appellant  
(Plaintiff)

And

**Graham Construction and Engineering (1985) Ltd.**

Respondent  
(Defendant)

Before: The Honourable Madam Justice Saunders  
(In Chambers)

On an application pursuant to the orders of the  
Court of Appeal for British Columbia, dated  
June 6, 2023, in Vancouver Dockets CA49053 and CA49056,  
for leave to bring an application for leave to appeal an order of the  
Supreme Court of British Columbia, dated  
August 28, 2017 (*611481 BC Ltd. v. Graham Construction and  
Engineering (1985) Ltd.*, Vancouver Docket S042966).

The Appellant, in person:

R.D. Dick

Written Submissions Received:

September 15, 2023

Place and Date of Judgment:

Vancouver, British Columbia  
November 14, 2023

**Summary:**

*The applicant is subject to an order requiring leave to commence proceedings in this court and has made such an application. The application is dismissed.*

**Reasons for Judgment of the Honourable Madam Justice Saunders:**

[1] By order dated June 6, 2023 in CA49053, Justice Griffin, on an application for a vexatious litigant declaration, ordered:

Rodney Daniel Dick, 611481 BC Ltd., R.D. Backhoe Services Inc., and any other company that Rodney Daniel Dick controls, are prohibited from bringing or continuing any appeal or application for leave to appeal without leave of the court or a justice, and that such application for leave of the court or a justice must be in writing and may be determined by a justice without an oral hearing.

[2] A second order in identical terms was made on the same day in CA49056.

[3] On February 16, 2017 in reasons for judgment indexed at 2017 BCCA 91, in an appeal concerning the same underlying action, S042966, a division of this court dismissed the application of R.D. Backhoe Services Inc. to vary the order of Justice Fenlon dated November 24, 2016, dismissing an application to extend time to apply to vary an order of a single justice ordering security for costs. In doing so, this court explained the background of the case, in particular that the order that was the subject of that appeal (CA43860) had dismissed a petition on the basis it was *res judicata* by reason of the dismissal of an earlier action (S042966) involving the same issues and the same parties and had been the subject of an unsuccessful appeal. In dismissing the application on February 16, 2017, this court ordered:

R.D. Backhoe Services Inc., 611481 BC Ltd., and Rodney Dick and their respective agents (collectively, the “Vexatious Parties”) are prohibited from commencing any further appeals or bringing any further motions or applications against the respondent, Graham Construction and Engineering Inc. or its subsidiaries, parent companies, partners, successors, agents, officers, directors, or employees without leave of a justice of this court.

[4] 611481 BC Ltd., through its principal Rodney Daniel Dick, now applies in writing for leave to bring an appeal from an order of Mr. Justice Jenkins dated August 28, 2017 in action no. S042966. Justice Jenkins dismissed Mr. Dick’s

application to amend his statement of claim dated April 13, 2013, in action no. S042966, the action earlier dismissed after a summary trial. An appeal of the order dismissing S042966 was dismissed by this court: 2014 BCCA 500.

[5] The orders I have noted restricting the bringing of appeals absent leave of a justice of this court were made on findings that the named restricted parties are vexatious litigants.

[6] The purpose of a vexatious litigant order was explained by Justice Groberman in *Gichuru v. Purewal*, 2023 BCCA 345:

[29] ... A fundamental purpose of a vexatious litigant order is to prevent the unnecessary expenditure of judicial resources on vexatious litigation. That purpose would not be served if judges were expected to provide detailed judgments on baseless applications for leave.

[7] In the context of a leave application brought as a result of a vexatious litigant order, the usual test for leave to appeal applies. The test is based on the well-known criteria set out in *Goldman, Sachs & Co. v. Sessions*, 2000 BCCA 326 (Chambers) at para. 10: (1) whether the point on appeal is of significance to the practice; (2) whether the point raised is of significance to the action itself; (3) whether the appeal is *prima facie* meritorious, or, on the other hand, whether it is frivolous; and, (4) whether the appeal will unduly hinder the progress of the action.

[8] On a leave application involving a person who is subject to restraint by reason of a declaration of vexatious litigant status, the primary factor is the merit of the appeal. In *Pearlman v. Critchley*, 2012 BCCA 344, *aff'd* 2012 BCCA 398, leave to appeal to the SCC *ref'd* [2012] S.C.C.A. No. 527, Garson J.A. (in Chambers) stated:

[14] The usual criteria for leave to appeal is modified somewhat where the prospective appellant requires leave to pursue an appeal as a result of a vexatious litigant order. In that case, the primary factor in deciding whether to grant leave is whether the appeal has merit (see: *Holland v. Marshall*, 2011 BCCA 223 at para. 11, 307 B.C.A.C. 12, leave to appeal filed [2012] S.C.C.A. No. 204; and *Nelson v. Canada*, 2006 BCCA 442 at para. 8, 152 A.C.W.S. (3d) 564, leave to appeal *ref'd* [2006] S.C.C.A. No. 421).

[9] In assessing merit, this court has applied the test for leave to pursue proceedings in the Supreme Court of British Columbia, that is, that the applicant must be able to show that the proceeding is “reasonably founded or arguable”: *Keremelevski v. Ukrainian Orthodox Church St. Mary Metropolitan*, 2012 BCCA 237 (Prowse J.A. in Chambers) at para. 13.

[10] In *Gichuru*, Justice Groberman provided further guidance on the appropriate approach to applications to commence proceedings in the Supreme Court of British Columbia. I consider those comments apply, with appropriate modification, to the assessment of merit, and the residual exercise of discretion to grant leave to appeal in this court:

[49] The result is this: where a vexatious litigant seeks leave to commence a new proceeding, the court must be convinced that the proposed proceeding is not doomed to fail and is not brought for an improper purpose or otherwise a clear abuse of process. Once the court is satisfied that the litigant has met those minimal requirements, the court may consider the totality of the circumstances to determine whether to exercise discretion in favour of granting leave. Where a serious injustice might result from a failure to allow the litigant to pursue the claim, discretion will invariably be exercised in favour of granting leave. On the other hand, where it is clear that a claim is weak, of no real importance, and uneconomical to litigate, discretion will almost certainly be exercised against granting leave.

[11] In my view, this is an appropriate application to determine on the basis of the written materials alone.

[12] I have had the opportunity to review the materials filed by Mr. Dick in support of this application. In my view, his appeal cannot succeed in the face of the previous dismissal of the underlying action, and the dismissal by this court of his appeal from that judgment. There was no foundational action on which to construct a proceeding before Justice Jenkins, or in this court; this court is *functus officio* with respect to the dispute.

[13] Accordingly, the application is dismissed.

“The Honourable Madam Justice Saunders”