

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Eilat Exploration Ltd. v. Patterson*,
2024 BCCA 53

Date: 20240207
Docket: CA49496

Between:

Eilat Exploration Ltd. and Kitov Resources Ltd.

Appellants
(Defendants)

And

Stephen Patterson

Respondent
(Plaintiff)

Before: The Honourable Madam Justice Saunders
(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated
September 11, 2023 (*Patterson v. Eilat Exploration Ltd.*,
Vancouver Docket S176844).

Oral Reasons for Judgment

No one appearing on behalf of the
Appellants

Counsel for the Respondent:

H. Yu

Place and Date of Hearing:

Vancouver, British Columbia
February 7, 2024

Place and Date of Judgment:

Vancouver, British Columbia
February 7, 2024

Summary:

The application is for an extension of time to appeal an order approving the sale of property to satisfy a judgment. The sale has completed, the sale proceeds have been paid into court, and the sale proceeds have been disbursed entirely, including the residual amount being paid to the applicants' assignee. The applicants did not appear and on being contacted, advised the court they do not intend to pursue the appeal. Held: the application is dismissed for failure to appear. In any case, coming as it did after the sale completed, the application would not have succeeded. Costs are awarded in the amount of \$1,000 for costs thrown away, including for the respondent's appearance which, with proper advice from the appellants they would not attend, would not have been required.

[1] **SAUNDERS J.A.:** The application before me today, brought by the appellants, Eilat Exploration Ltd. and Kitov Resources Ltd., is for an extension of time to appeal the order of Mr. Justice Walker made September 11, 2023. That order approved the sale of property owned by Kitov to satisfy judgment debts owing in favor of Mr. Patterson.

[2] Mr. Justice Walker followed on the judgment of Mr. Justice Macintosh on July 29, 2021, made after a 12-day trial. Mr. Justice Macintosh found that the appellants are jointly and severally liable to Mr. Patterson for an amount in excess of \$150,000 in unpaid salary, as well as an amount in excess of \$80,000 in employment expenses. I refer to 2021 BCSC 1474. Mr. Patterson was later awarded trial costs in the amount of nearly \$40,000. Kitov's appeal of the judgment was dismissed as abandoned for failure to post security for costs as ordered.

[3] Following trial, Mr. Patterson registered his judgment against property owned by Kitov and began enforcement proceedings. A third company, Visionlink Corp., commenced a claim against Kitov and Mr. Patterson claiming it was the beneficial owner of the properties legally owned by Kitov, and on July 13, 2023, Mr. Justice Coval struck that claim as an abuse of process and collateral attack on Mr. Patterson's *Court Order Enforcement Act* declarations and orders. Those reasons for judgment are indexed as 2023 BCSC 1341.

[4] In those reasons for judgment, Mr. Justice Coval described the steps taken by the respondent to enforce his judgment as diligent and extensive. In the end, he

observed that no party had taken steps to challenge the order for sale. An order for sale was eventually made in these proceedings, but that order for sale, too, was not challenged.

[5] Mr. Patterson proceeded to take steps to sell the properties, and on September 11, 2023, Mr. Justice Walker approved the sale of the properties to a corporation for \$750,000. It is that order which is appealed.

[6] The sale completed on September 18, 2023, resulting in the net proceeds of sale, \$668,886.21, being paid into court.

[7] On October 10, 2023, Madam Justice Warren ordered a total of \$304,531.19 be paid out of court to Mr. Patterson for trial and costs judgments, and pre-judgment and post-judgment interest.

[8] On October 19, 2023, the appellants filed an application to release a further sum of \$8,494.61 to Mr. Patterson on account of further costs orders, and to release the balance of the money in court (which was in excess of \$350,000) to an assignee of Kitov. Mr. Patterson consented to that application, and the monies now have all been paid out.

[9] As the order under appeal was made on September 11, 2023, the time to file the appeal expired on October 11, 2023. The appellants, Eilat and Kitov, filed their notice of appeal out of time on November 23, 2023, and so required an extension of time to appeal. That is the application that is before me today.

[10] This application came before the Court on January 4, 2024, and it was adjourned to today's date on conditions that, I am told, have been met.

[11] However, the appellants have neither appeared today, nor advised the Registry they would not be appearing today. They also did not advise the respondent, Mr. Patterson, or his counsel, that they would not appear today. The result is everyone is here in the courtroom expecting the application to proceed and it cannot because we have no applicant present – the appellants simply have

chosen to stay away. Madam Registrar has contacted the principal of the appellants and has been advised that the appellants are not going to appear today and that they do not intend to proceed with the appeal.

[12] Accordingly, this application is dismissed. I will address the costs question of this hearing at the end of my comments.

[13] I will say, however, that I have reviewed the materials and, absent the appellants, I consider the application could not succeed because it does not meet the criteria for an extension of time to commence an appeal set out in *Davies v. C.I.B.C.* (1987), 15 B.C.L.R. (2d) 256 at 259–260 (C.A.).

[14] In particular, the criterion most clearly not met is the criterion there be sufficient merit to the appeal to warrant the appeal proceeding. Further, the respondent would be unduly prejudiced by an extension of time, and it is not in the interests of justice that an extension be granted.

[15] As to the merits of the appeal, the order in issue is the order confirming sale of the property. That sale has completed and the property is now vested in a *bona fide* purchaser for value.

[16] Second, the order for sale is one given in the exercise of the judge's discretion and represents the judge's conclusion that the offer presented to the court was provident, and should be accepted. A highly deferential standard of review would apply to a challenge of that order, and I cannot foresee a division of this court, in the circumstances here, undoing that conclusion.

[17] Third, Kitov itself has benefitted from the sale by, through its assignee, taking the proceeds from sale by the order for payment out of the court. It is inappropriate for Kitov now to seek to appeal an order when it has used the sale proceeds derived from the order appealed to its benefit.

[18] I am dismissing the application because the appellants have not appeared, but I am also satisfied on the merits of the application that it was inevitable, whatever

may have been said by the appellants today, that the application would be dismissed.

[19] It seems to me that the respondent to the appeal, Mr. Patterson, is entitled to his costs. His counsel has appeared today needlessly, for lack of proper advice from the appellants, and I order that the appellants pay \$1,000 in costs as a lump sum for the costs thrown away.

“The Honourable Madam Justice Saunders”