COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Goodall v. Reeves,*
2024 BCCA 162

Date: 20240424
Docket: CA49700

Between:

Shawn Frederick Goodall, Rebekah Anne Prather, and Gabriola Cannabis Limited

Appellants
(Respondents)

And

Mary Lynn Reeves

Respondent
(Petitioner)

Before: Registrar T.R. Outerbridge

On appeal from: An order of the Supreme Court of British Columbia, dated February 22, 2023 (*Reeves v. Goodall*, Nanaimo Docket S96809).

Oral Reasons for Decision

The Appellant, appearing in person, and on behalf of Rebekah Anne Prather and Gabriola Cannabis Limited (via videoconference):	S. Goodall
Counsel for the Respondent (via videoconference):	S. Hern, K.C.
Place and Date of Hearing:	Vancouver, British Columbia April 24, 2024
Place and Date of Decision:	Vancouver, British Columbia April 24, 2024

Summary:

Urgent application brought before the Registrar to shorten the time to seek a stay of proceedings. The parties were engaged in a shareholder dispute concerning the ownership of a retail cannabis store. That dispute was settled for $80,000 at a settlement conference over a year ago and formalized in the order under appeal. As no amounts were then paid by the appellants, execution proceedings began. The appellants then sought to shorten the time for a stay as the sheriffs were involved and funds were garnished. Held: Application dismissed. The appellants' evidence outlining the need to hear the stay urgently was only of a general nature. While there was prejudice to the appellants here, the cost and inconvenience to the respondent was high, particularly given delay and certain procedural defects in the appeal.

[1] **REGISTRAR OUTERBRIDGE**: The appellant, Shawn Frederick Goodall, applies to hear a stay of proceedings urgently. He does so on behalf of the other two appellants, Rebekah Anne Prather and Gabriola Cannabis Limited.

[2] The parties were engaged in a shareholder dispute concerning the ownership of a retail cannabis store. They entered into a business relationship in 2020, with each party taking shares in the company. In early 2021, the relationship deteriorated. The respondent, Mary Lynn Reeves, then filed a petition seeking various remedies for oppressive conduct against her, including the cancellation of her shares.

[3] The parties then engaged in a settlement conference. A consent settlement order was made on 22 February 2023, which is the subject of this appeal. The appellants argue the consent order giving effect to the settlement was made under duress and had other procedural deficiencies. Nonetheless, the order settles the dispute for $80,000, representing the respondent's shares in the company, repayment of an outstanding shareholder loan, and costs. The order was formally settled on 18 October 2023.

[4] As the settlement funds were then not paid by the appellants, the respondent began to execute on the order. A garnishing order issued on 20 December 2023, and in January 2024, close to $70,000 was paid into court in partial satisfaction of the judgment. Those funds have now been paid out to the respondent, pursuant to an order of an Associate Judge on 29 February 2024.

[5] On 28 March 2024, a writ of seizure and sale issued, targeting the appellants' assets and close to $20,000 in remaining judgment debt, including costs and interest. A bailiff attended Mr. Goodall's residence in an effort to further execute the judgment on 16 April 2024, which has now prompted the appellants to urgently seek a stay. Specifically, the stay is sought on the basis that the execution process now prevents the appellants from doing business and, if they cannot continue to do business, they will not be able to make payment on their obligations or provide for themselves.

[6] There are two preliminary issues with the appellants' application.

[7] First, there is also the issue of delay. The order under appeal was made over a year ago. The appellants have not filed an extension of time along with their notice of appeal. This omission raises a jurisdictional question as s. 33(1) of the *Court of Appeal Act*, S.B.C. 2021, c. 6 requires an appeal to be "brought" prior to ordering a stay of proceedings. As observed in *Wu v. Murray,* 2023 BCCA 270, an appeal must be filed and served within the timeframe prescribed by the *Rules* and a failure to do so is a failure to bring the appeal. Of course, I do not purport to rule on that question, but there is a prospect the appellants' stay application may be defeated at the outset if an extension of time is not also brought, either beforehand or at the same time.

[8] Second, at the proposed stay application, the respondent intends to advance an argument that the appeal itself is misconceived. She will argue that issues arising from the settlement must be the subject of a new action. That was the case in *Pond v. Pond,* 2017 BCCA 243, a case with some analogous facts to the situation here. In that case, the parties attempted to appeal a consent order giving effect to a settlement. The appeal was dismissed. The Court wrote as follows:

> [4] If [the appellant] wishes to pursue her objection, Ms. Pond must begin a new proceeding in the Supreme Court of British Columbia and bring evidence concerning duress, *non est factum*, or an appropriate ground she relies on, in support of the argument that the consent order should be set aside. A judge would then make the necessary findings and either grant or dismiss the application on the merits. The losing party would then, subject to the *Court of Appeal Act*, R.S.B.C. 1996, c. 77, and the Rules, be able to

> appeal to this court. As it is, however, there is no judgment concerning the validity of the consent order that could form the basis for an appeal.

[9] This potential issue has been brought to the attention of the appellants by the respondent, but I raised it again at the hearing for the appellants to consider before proceeding both with a costly application on a compressed timeline and an appeal.

[10] Setting these two issues aside for a moment, I turn now to examine the law relating to urgent applications.

[11] In *Vabuolas v. British Columbia (Information and Privacy Commissioner)*, 2024 BCCA 41 (Registrar), I discussed the practice of bringing urgent applications:

> [6] Urgent applications are governed by Rule 57 of the *Court of Appeal Rules*. That rule provides that a party may apply to a justice or the registrar for permission to bring an application on shorter notice than otherwise required.
>
> [7] On an urgent application, or what is better described as an application seeking to hear another application urgently, a justice or the registrar may allow an abridgement of time to hear the main application and make various incidental orders under Rule 57(3). If an order is made under Rule 57(3), the party who brought the application must serve notice of that order on each party under Rule 57(4).
>
> [8] A leading case on urgent applications, or "short leave" applications as they were once known, is Master Baker's decision in *O'Callaghan v. Hengsbach*, 2017 BCSC 2182. The Master observed as follows:
>
> > [17] Such applications should be restricted to emergent circumstances and should not reward inefficiency, inattention to a particular case, or a lack of oversight. To abridge the time limits imposed by [the Rules] is, presumably, to prejudice the other party who is, naturally, entitled to rely on timelines imposed by the Rules and to expect the opposing party to do likewise.
>
> [9] The same reasoning applies to urgent applications under Rule 57. Before bringing the application, a party should consider whether the matter is truly urgent or if an accommodation can be reached to allow the regular timelines to apply. If it proceeds, it should be served by whatever means possible on the other parties.

[12] As noted in the quoted passage from *O'Callaghan v. Hengsbach*, 2017 BCSC 2182, determining an urgent application involves a balancing of prejudice. Where urgency is disputed, some evidence of prejudice is required: *O'Callaghan* at para. 18(f).

[13] Here, the evidence submitted by the appellants relating to financial hardship is of a general nature. It does not describe any immediate prejudice apart from the ongoing financial difficulty arising from the judgment and the recent activities of the bailiff. In particular, it does not provide evidence suggesting a five-business day timeline under Rule 20 is insufficient when compared to one abridged by a few days. Abridging a five-day timeline must be a truly urgent circumstance. Here, seeking a stay on a regular timeline does not prohibit the appellants from still moving quickly if they choose.

[14] Seeking to shorten time inevitably puts the respondent to inconvenience and cost. As described in *Henry v. Fontaine,* 2022 BCSC 733 at para. 12, the party seeking to shorten time should exhibit "… the sense of urgency that they ask this court to find exists in order to grant short leave." In this case, the appellants' conduct does not. The appeal was brought over a year after the order was made on 26 February 2024. Then, the appellants have not sought to stay the original settlement order until they filed this application on 22 April 2024, almost two months later. I also note the appellants have not served any of today's application material on the respondent, despite having opportunity to do so.

[15] As well, because the Court may be unable to consider the stay application without an extension of time, those two applications must be brought together, further increasing the burden on the respondent to answer on a compressed timeline.

[16] Weighing all of these factors, it becomes clear that while there is some prejudice to the appellants here, it does not outweigh the prejudice to the respondent in abridging time.

[17] I dismiss the appellants' application.

"T.R. Outerbridge, Registrar"