In the Court of Appeal of Alberta

Citation: Davis v President's Choice Financial, 2024 ABCA 338

Date: 20241028
Docket: 2403-0138AC
Registry: Edmonton

2024 ABCA 338 (CanLII)

Between:

Sydney Davis

Applicant

- and -

President's Choice Financial

Respondent

Reasons for Decision of
The Honourable Justice Jane A. Fagnan

Application to Restore Appeal

Reasons for Decision of
The Honourable Justice Jane A. Fagnan

2024 ABCA 338 (CanLII)

The Court:

[1] The self-represented applicant applies to restore her appeal under Rule 14.47 of the *Alberta Rules of Court,* Alta Reg 124/2010. The application is dismissed for the following reasons.

[2] On June 18, 2024, the Acting Chief Justice of the Court of King's Bench found that the applicant and others had been caught up in a groundless "debt elimination scheme" advanced by one Colton Kumar who purported to represent the applicant in court: ***Bonville v President's Choice Financial,*** 2024 ABKB 356. The resulting order stayed the applicant's action pending submissions and/or affidavit evidence as to why she should not be required to pay $10,000 in security for costs, failing which her action would be terminated. She was to file any such submissions or affidavit evidence by July 5, 2024.

[3] On June 25, 2024, the applicant filed her Notice of Appeal of that decision. On July 26, 2024, the Registrar struck the appeal because the applicant had failed to file the appeal record within the applicable time limit. On August 12, 2024, the applicant filed this application to restore her appeal.

[4] On August 20, 2024, the ACJKB found that the applicant had not taken any steps pursuant to the earlier decision and ordered her to pay security for costs by September 6, 2024, failing which her action would be struck and judgment granted on the respondent's counterclaim: ***Bonville v President's Choice Financial***, 2024 ABKB 483 at paras 51-56.

[5] The hearing of this application to restore the appeal of the June 18, 2024 decision was set for September 5, 2024. Counsel for the respondent attended but informed the Court that the respondent had not been served with the application. The Court granted an adjournment. Both parties consented to a hearing based on the parties' written submissions.

[6] On September 16, 2024, the ACJKB struck the applicant's pleading and granted judgment as the applicant had neither provided submissions nor paid security for costs: ***Bonville v President's Choice Financial***, 2024 ABKB 546.

[7] On October 10, 2024, the respondent filed its written submissions on this application to restore the appeal.

[8] An application to restore an appeal is discretionary and requires consideration of various factors: ***Prochazka v Alberta (Maintenance Enforcement Program)***, 2014 ABCA 448 at para 4; ***The Owners: Condominium Plan No 982 6403 v CPI Crown Properties International Corporation***, 2018 ABCA 232 at para 11.

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[9] I am mindful that the applicant is not represented by counsel and this may well explain the failure to follow the prescribed steps for the appeal. Further, the respondent concedes that it would not suffer onerous prejudice if the application were allowed.

[10] For the purposes of this application, it is only necessary to address the arguable merit of the appeal. The threshold to establish arguable merit is "very low": ***Warren v Warren***, 2019 ABCA 20 at para 62.

[11] The Notice of Appeal indicates the following ground of appeal: "the decision is unreasonable or not supported by evidence". The following relief is claimed: "all false credit reports from February 5, 2024 forward be removed from [the applicant's] credit history; $100,000 in damages for negligence in the workplace leading to damages, false or misleading credit reporting, and harassment". This is the relief claimed in the applicant's King's Bench action.

[12] The applicant's memorandum filed in support of the application to restore her appeal states the merits of the appeal as follows:

- Our appeal challenges the application of OPCA principles to legitimate requests for debt validation.
- It questions the legal standards applied to credit reporting and the fairness of the security for costs imposed on us.
- The appeal seeks to protect the privacy and rights of third parties, Kevin Kumar and Colton Kumar, who were subject to unnecessary restrictions.

[13] The June 18, 2024 decision did not impose security for costs. It did not make any final determination in the action or grant judgment for any party. Neither the applicant's Notice of Appeal nor her memorandum of argument mentions the stay imposed on June 18, 2024 pending submissions on security for costs. As for any restrictions on Kevin and Colton Kumar, nothing has been provided to suggest that the applicant has standing to assert the privacy interests and rights of those individuals on an appeal.

[14] The June 18, 2024 order was essentially a pre-trial procedural decision imposing a time limit for filing of materials prior to proceeding further with the action. Such a decision attracts a high level of deference on appeal. It requires permission to appeal under Rule 14.5(1)(b). Permission to appeal will generally only be granted if it raises a serious question of importance and has a reasonable chance of success given the underlying merits: ***1920341 Alberta Ltd v Jonsson***, 2018 ABCA 231 at para 10. The appeal as formulated has no reasonable chance of success.

[15] In any event, since the June 18, 2024 order was issued the deadline for submissions or affidavit evidence has passed, the security for costs decision has issued and judgment has been

granted to the respondent. The applicant has not appealed the security for costs decision of August 20, 2024 - which would have required permission under Rule 14.5(1)(h) - nor the decision of September 16, 2024 striking her pleading and granting judgment on the respondent's counterclaim. The appeal deadlines for both have passed. Given what has transpired in the King's Bench action, the appeal of the June 18, 2024 order would have no practical effect on the parties. There is no meaningful relief which the Court could grant on the appeal in the circumstances.

[16] The applicant has not met the very low threshold to establish arguable merit.

[17] The discretion to restore an appeal should be used sparingly and with a view to the interests of justice: ***Allen v Alberta (Seniors and Community Supports)***, 2015 ABCA 238 at para 5. No interest of justice would be served by restoring the applicant's appeal.

[18] The application is dismissed.

[19] Rule 9.4(2)(c) is invoked. The Court will prepare the resulting order.

Application adjourned on September 5, 2024.

Written submissions of the respondent received October 10, 2024.

Reasons filed at Edmonton, Alberta
this 28th day of October, 2024

Fagnan J.A.

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Appearances:

Applicant, Sydney Davis

L.E. Miller
for the Respondent

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