

# In the Court of Appeal of Alberta

**Citation: Condominium Corporation No. 752 1349 v Muhammad, 2024 ABCA 234**

**Date:** 20240627

**Docket:** 2403-0087AC

**Registry:** Edmonton

**Between:**

**Condominium Corporation No. 752 1349**

Respondent

- and -

**Haji Sher Muhammad and Raheem Uddeen**

Applicants

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**Reasons for Decision of  
The Honourable Chief Justice Ritu Khullar**

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Application for Permission to Appeal

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[1] This is an application for permission to appeal a decision of a chambers judge who refused to extend time to appeal the decision of an applications judge. Permission is required by s 14.5(1)(g) of the *Rules* because the amount at stake in the appeal is less than \$25,000 when costs are excluded.

[2] For the reasons given below, I dismiss the application.

**I. Background facts**

[3] The applicant's late father owned a condominium unit. The condominium corporation board levied an assessment on unit owners to pay for renovations. In November 2019, owners were given the option to pay a lump sum within a deadline or to pay a higher monthly condominium fee over five years (which included an amount for interest).

[4] The applicant or his father missed the deadline to pay by lump sum, so the condominium corporation charged additional condo fees, which were increased from \$250 per month to \$380.97 per month. The appellant or his father continued to pay \$250 by post-dated cheques, which the condominium board rejected as insufficient; and for some reason, they chose not to cash these post-dated cheques thereby increasing the applicant's debt.

[5] In November 2021, the condominium corporation brought a foreclosure action against the applicant. The applicant deposes that he made offers to pay the debt in November 2020 before the lawsuit started, but the offers were rejected.

[6] In September 2022, the condominium corporation sought summary judgment on the debt. Before the summary judgment hearing, the applicant paid the outstanding lump sum amount under protest but was unwilling to pay interest or costs.

[7] On October 18, 2022, an applications judge granted summary judgment of \$2,499.12<sup>1</sup> and costs on a "reasonable solicitor client basis". The applicant was not ordered to pay interest. There was a further appearance on November 29, 2022 to settle the terms of the order.

[8] The formal order was served on December 2, 2022. At that point, the applicant had 10 days within which to file a notice of appeal from the applications judge's decision: R 6.14(1). He did not do so, and the appeal period expired on December 12, 2022. As indicated during oral argument

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<sup>1</sup> At the summary judgment hearing, it emerged that the applicant had paid more than \$2,499.12, and the applications judge directed that the overpayment (\$690.96) should be applied to the costs award.

on this application, in part, he wanted to wait until after the assessment of costs because if it was a reasonable amount from his perspective he might just pay and put this matter behind him.

[9] On February 6, 2023, an assessment officer set reasonable solicitor and client costs and disbursements at \$20,494.77. The applicant was not present at the assessment hearing as a result of an apparent administrative change of time to the assessment hearing. This decision was not appealed.

[10] It appears that the amount of assessed costs surprised the applicant, although he had opposed any costs order from the start. His objection was, and remains, that the applications judge failed to consider his pre-litigation offers, which should have reduced or eliminated any costs order.

[11] On February 16, 2023, the applicant applied to another application judge to stay enforcement of the costs order, which was dismissed on February 23, 2023. The presiding applications judge told the applicant that he would need to bring an application to extend the time to appeal.

[12] On March 9, 2023 the applicant filed an irregular application to extend the time. A chambers judge adjourned that application *sine die* and gave the applicant specific instructions about how to perfect the application.

[13] In the absence of a stay order, the condominium corporation began enforcement proceedings on the outstanding amount including garnishing wages and steps to sell the condominium.

[14] The applicant did not file a proper application to extend the time to appeal until March 20, 2024. By that time, he had retained a lawyer on a limited retainer to assist with that application. A chambers judge heard the application on March 28, 2024 and dismissed it.

[15] The chamber judge's oral reasons cited the test from *Cairns v Cairns*, [1931] 4 DLR 819 and denied the extension for two main reasons. First, the delay between the deadline for appealing (December 12, 2022) and the hearing of the application to extend time (March 28, 2024) was extremely long. The applicant had done little to expedite the application to extend time since becoming aware of its necessity in February 2023. Second, the appeal did not have a reasonable prospect of success because there was no indication in the transcript that the applications judge overlooked the applicant's offers to settle.

[16] The applicant filed a notice of appeal of the chambers judge's decision on April 25, 2024. The Court's case management officer subsequently told the applicant that he would need to apply for permission to appeal, and he filed the present application on May 31, 2024.

## II. Is permission to appeal required?

[17] There was some disagreement about whether this is an appeal “as to a costs award only” that needs permission under R 14.5(1)(e).

[18] The applicant’s principal concern is the costs order, but the record indicates that he tried to appeal the summary judgment decision and the costs order. As noted, the chambers judge declined to hear the appeal. The proper characterization of this appeal is that it relates to a substantive decision (summary judgment) and cost, so permission to appeal is not required under R 14.5(1)(e).

[19] However, permission to appeal is needed under R 14.5(1)(g) of the *Rules* if “the amount in controversy in the appeal can be estimated in money and does not exceed the sum of \$25,000 exclusive of costs”. In other words, permission is required if the value of the substantive decision is \$25,000 or less without considering costs.

[20] Here, the substantive decision is the summary judgment decision. Again, there was some disagreement about whether the related costs decision exceeds \$25,000 (taking into account subsequent costs of enforcement proceedings) but that is immaterial. The value of the substantive decision is \$2499.12, so R 14.5(1)(g) requires permission to appeal.

## III. Should permission to appeal be granted?

[21] Several factors can be relevant to an application for permission to appeal under R 14.5(1)(g) depending on the circumstances. Important considerations in every application are whether the appeal has arguable merit and whether it raises a question of law of sufficient importance to justify consideration by a panel of three judges of this Court: *Rocks v Ian Savage Professional Corporation*, 2015 ABCA 77 at para 12; *Willier v McGurk*, 2015 ABCA 299 at para 7.

[22] Here, the decision potentially subject to appeal is the chambers judge’s refusal to extend the time to appeal. This is not an application for permission to appeal the applications judge’s decision. Under the *Rules*, there are no direct appeals from an applications judge to this Court: R 14.4(4); *Lam v University of Calgary*, 2021 ABCA 80 at para 3.

[23] To get permission to appeal, the applicant needs to show that the refusal to extend time to appeal reflects an arguable error of law that is of sufficient importance to justify a panel hearing it.

[24] The applicant has not done so. Unfortunately, his arguments are directed at the applications judge’s decision. He reiterates that the costs decision failed to consider his offers to pay the debt owed in November 2020 before the lawsuit started and that the offers should have eliminated or reduced the costs award.

[25] On the materials before me, that argument is unfounded. More importantly, the argument does not attempt to show that the chambers judge made an arguable error of law in refusing the extension of time. The applicant has not identified any such error, so permission to appeal must be denied.

[26] For the applicant's benefit, I make the following additional comments.

[27] If the appeal were allowed to proceed, it would very likely be dismissed. The chambers judge's decision not to extend time was a discretionary decision, which this Court would confirm unless there was some identifiable error of law or it was clearly unreasonable.

[28] The chambers judge was concerned by the extremely long delay between the expiry of the time to appeal the applications judge's decision (December 12, 2022) and the hearing of the application to extend the time to appeal (May 28, 2024).

[29] There are short timelines in the *Rules of Court* to appeal decisions for a good reason. People who have a court judgment should not be at risk of having it taken away or reduced for an indefinite period. They have their own lives to live and should not have to worry about defending their judgment long after it was given. Where the delay between the expiry of the appeal period and the application to extend time to appeal is very long – as it was here – the circumstances must be very exceptional to justify extending time.

[30] Based on the materials before me, the chambers judge had a legitimate reason to refuse an extension of time, and this Court would very likely dismiss an appeal of it.

[31] I appreciate that the applicant has his explanations for the delay. He was working abroad between 2011 and February 2024 and returned to Edmonton only sporadically. In addition, he suffered a number of deaths in his family, many of whom lived overseas. He argues that he is a self-represented litigant and did not understand the strict deadlines for appeals. The record shows that the applicant was told several times of the need to extend time and how to do so. If the delay were a matter of weeks, the applicant's circumstances might be an excuse for appealing late. But, it is not a reasonable excuse for more than a year's delay.

[32] The application is dismissed. Rule 9.4(2)(c) will apply.

[33] The condominium corporation asked for enhanced costs of this application but provided no basis for the request, so costs shall be calculated under Column 1 of Schedule C. I award \$1,000 in costs for a contested application with a brief, reasonable disbursements and GST. However, no disbursements associated with the 336 page Extracts of Key Evidence are allowed. Many of those documents were unnecessary or replicated transcripts the applicant had already filed.

Application heard on June 20, 2024

Reasons filed at Edmonton, Alberta  
this 27th day of June, 2024

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Khullar C.J.A.

**Appearances:**

P.D. Greep  
for the Respondent

Applicant, Raheem Uddeen