

COURT OF APPEAL OF YUKON

Citation: *Freedom TV v. Holland*,
2016 YKCA 17

Date: 20161229
Docket Nos.: 16-YU791; 16-YU792

Between:

**DP1 Inc., Freedom TV Inc., Masterworks, 2011 TV Inc.,
Aaron Goldman and Symphonic Vision Inc.**

Appellants
(Plaintiffs)

And

**Jim Holland, Green Needle Records, Seaweed Studios,
Chris Rodgers, AVCR Video Production**

Respondents
(Defendants)

Before: The Honourable Mr. Justice Frankel
(In Chambers)

On appeal from: Orders of the Supreme Court of Yukon, dated August 29 and
September 2, 2016 (*Freedom TV v. Holland*, 2016 YKSC 44, and (September 2,
2016), Whitehorse Docket No. 14-A0024).

Acting on behalf of the Appellants
(via telephone):

A. Goldman

No one appearing on behalf of the
Respondents

Place and Date of Hearing:

Vancouver, British Columbia
December 6, 2016

Additional material filed:

December 19, 2016

Place and Date of Judgment:

Vancouver, British Columbia
December 29, 2016

Summary:

Applications to extend time to file notices of appeal from decisions by a case-management judge denying applications by the plaintiffs to (1) adjourn a security for costs application and (2) for leave to cross-examine on affidavits related to that application. The judge later made a security for costs order which the plaintiffs have appealed. Held: Applications dismissed. The appeals relating to the adjournment and cross-examination applications would serve no useful purpose as those matters can be raised on the appeal from the security for costs order.

Reasons for Judgment of the Honourable Mr. Justice Frankel:

Introduction

[1] This is an application by the appellants (plaintiffs) to extend the time to file notices of appeal from a decision made by Mr. Justice Veale of the Supreme Court of Yukon in connection with an application by the respondents (defendants) for an order that the appellants post security for costs. Mr. Justice Veale is the case-management judge.

[2] When the matter came on for hearing before me in chambers on December 6, 2016, Mr. Goldman appeared on behalf of himself and his companies. No one appeared for the respondents. After hearing Mr. Goldman, I reserved my decision pending his providing me with additional material. That material has since been provided.

[3] For the reasons that follow, these applications are dismissed. As I will explain, the appeals in respect of which the extensions of time are sought are unnecessary, as the issues Mr. Goldman seeks to raise can be raised in the appeal he has filed from the security for costs order.

Factual Background

[4] Mr. Goldman acts on his own behalf and on behalf of his companies in litigation in Yukon, Ontario, and before the Federal Court. The matter with which I am concerned arises in the context of an action he commenced against the personal and corporate respondents seeking damages arising out of arrangements to create audio and video recordings of a music festival in Whitehorse.

[5] Mr. Goldman asserts he has cognitive impairments that interfere with his ability to conduct the litigation in which he is involved. In July 2016, he applied to adjourn all matters relating to the present action pending the completion of an assessment and treatment plan, and the implementation of accommodations to permit him to move forward with the matters outstanding in the Yukon Supreme Court and other courts. When Mr. Goldman brought his application, the respondents' security for costs application had been set for September 2, 2016.

[6] On August 29, 2016, the case-management judge made the following orders:

1. The application of the Plaintiffs to adjourn all matters scheduled in this action pending medical recommendations for accommodation is dismissed.
2. The application of the Plaintiffs to adjourn the matters scheduled to be heard on August 29, 2016 is denied.
3. The application of the Plaintiffs for the court to include in its deliberations the Affidavit of Aaron Goldman #9 filed August 29, 2016 is denied.
4. The hearing of the Plaintiffs' application dated March 23, 2016 and the Plaintiffs' application for costs scheduled to be heard on September 1, 2016 is adjourned generally.
5. The hearing of the Defendants' application for security for costs scheduled to be heard on September 2, 2016 shall proceed on that date.
6. The application of the Plaintiffs to cross examine the defendants Chris Rodgers and Jim Holland on their affidavits prior to the hearing of the Defendants' application for security for costs on September 2, 2016 is dismissed.
7. The Plaintiffs may file further materials and an Outline in response to the Defendants' Outline by no later than 4:00 p.m. on Wednesday August 31, 2016.
8. The requirement for the Plaintiffs to approve this Order as to form is dispensed with, however the Defendants' counsel shall send a draft of the Order to Aaron Goldman for his review.

[7] On September 1, 2016, the case-management judge released written reasons for judgment with respect to the abovementioned orders: *Freedom TV v. Holland*, 2016 YKSC 44. (A formal order was entered on November 3, 2016.)

[8] On September 2, 2016, Mr. Goldman faxed three notices of appeal to this Court's registry in Whitehorse. In each of those notices, Mr. Goldman sought to appeal a different aspect of the August 29, 2006 order, namely:

- (a) the refusal to adjourn the hearing of the defendants' security for costs application set for September 2, 2016;
- (b) the refusal to permit cross-examination of the personal defendants prior to hearing the security for costs application; and
- (c) the refusal to adjourn all matters pending the completion of an assessment and treatment plan, and the implementation of accommodations.

[9] The registry advised Mr. Goldman his notices of appeal would not be accepted for filing until he paid the required fees.

[10] When the security for costs application came on for hearing on September 2, 2016, Mr. Goldman again unsuccessfully applied for an adjournment. The case-management judge then heard the security for costs application and reserved his decision.

[11] On October 4, 2016, the case-management judge issued reasons for judgement staying the action until Mr. Goldman provides security for costs in the amount of \$10,000: *Freedom TV v. Holland*, 2016 YKSC 52.

[12] On October 7, 2016, Mr. Goldman paid the filing fees for the three notices of appeal he had faxed to the registry on September 2, 2016. As all of the notices related to the order made on August 29, 2016, the registry assigned them one file number, i.e., No. 16-YU791. That day Mr. Goldman also filed:

- (a) a motion for an order extending the time for filing the notices in No.16-YU791;

- (b) a notice of appeal from the denial of his September 2, 2016 adjournment application and a motion for an order extending the time for filing that notice (No. 16-YU792); and
- (c) a notice of appeal from the order for security for costs (No.16-YU794).

[13] On December 19, 2016, Mr. Goldman emailed an amended notice of appeal in No. 16-YU791 to the registry. That notice joins in one document the three appeals taken from the August 29, 2016 order.

Discussion

[14] By virtue of s. 2(a) of the *Court of Appeal Act*, R.S.Y. 2002, c. 47, an appeal lies to this Court “from every judgment, order or decree made by the Supreme Court or a judge thereof whether final or interlocutory”. For present purposes I will assume, without deciding, that the denial of an adjournment or of cross-examination is an order that can be appealed on a stand-alone basis. The security for costs order is clearly an appealable interlocutory order.

[15] The factors to be considered on an application to extend time are: (a) was there a *bona fide* intention to appeal; (b) when was the respondent informed of that intention; (c) would the respondent be unduly prejudiced by the extension; (d) is there merit in the appeal; and (e) is it in the interest of justice that an extension be granted. The last factor is the most important as it encompasses the other factors: *Davies v. C.I.B.C.* (1987), 15 B.C.L.R. (2d) 256 at paras. 20, 22; *Holmes v. Matkovich*, 2008 YKCA 2 at para. 22 (Chambers), 251 B.C.A.C. 149.

[16] In my view, it is not in the interests of justice to extend the time for filing the notices of appeal in Nos. 16-YU791 and 16-YU792. Permitting those appeals to go forward would serve no useful purpose.

[17] The decisions that Mr. Goldman seeks to challenge in Nos. 16-YU791 and 16-YU792 concern preliminary matters that culminated in the granting of the security for costs order. Mr. Goldman has appealed that order and it is open to him in the course of that appeal to take issue with what preceded it. Put otherwise, the case-

management judge's decisions with respect to adjournments and cross-examination are subsumed within the security for costs order: see *Bentley v. The Police Complaints Commissioner*, 2012 BCCA 514 at para. 10 (Chambers), 40 B.C.L.R. (5th) 266; *Moon Development Corporation v. Pirooz*, 2014 BCCA 64 at para. 29 (Chambers), 352 B.C.A.C. 25; *Pimicikamak v. Manitoba*, 2016 MBCA 106 at para. 18 (Chambers). Consequently, a denial of the extensions sought will not prejudice the appellants.

Disposition

[18] The applications to extend time are dismissed.

“The Honourable Mr. Justice Frankel”