

COURT OF APPEAL FOR THE YUKON TERRITORY

Citation: ***Versluce Estate v. Knol***,
YKCA 2008 18

Date: 20081201
Docket: 06-YU577

Between:

**Genevieve Piper, Executrix
The Estate of Harry Versluce, Deceased**

Respondent
(Plaintiff)

And

Lucas Knol

Appellant
(Defendant)

Before: The Honourable Madam Justice Prowse
The Honourable Mr. Justice Lowry
The Honourable Madam Justice Kirkpatrick

Oral Reasons for Judgment

G. W. Whittle
(via teleconference)
Place and Date:

Appellant appearing In Person
Counsel for the Respondent
Vancouver, British Columbia
December 1, 2008

[1] **LOWRY J.A.:** Lucas Knol seeks a review of the order of Mr. Justice Frankel who dismissed his application to have this appeal removed from the inactive list before the time elapsed for it to stand dismissed as abandoned.

[2] The appeal is taken from a decision of Mr. Justice Gower arising out of a dispute over an option agreement Mr. Knol claims to hold pertaining to the purchase of a trailer home and some adjacent property. Genevieve Piper is the executrix of the will of Harry Versluce who, the year before his death in 2002, is said to have made the agreement with Mr. Knol. Ms. Piper sought declaratory relief and Mr. Knol counterclaimed asserting a right to the property. Judgment was given in February 2007 with reasons indexed as 2007 YKSC 09. The judge found Mr. Knol's evidence to be lacking credibility. He found the agreement was void for uncertainty and for lack of consideration. The relief sought was granted and the counterclaim was dismissed.

[3] Mr. Knol filed a notice of appeal in March 2007. He applied in July 2007 for indigent status, an extension of time for the filings necessary to prosecute the appeal, and other relief. His application was heard in July 2007, with a further motion in August 2007, and dismissed by Mr. Justice Veale who took the view Mr. Knol's financial circumstances and the prospect of any success of the appeal did not warrant the order sought. Mr. Knol was allowed until October 2007 ultimately to make the filings necessary to prosecute his appeal including a certificate of readiness. The reasons are indexed as 2007 YKCA 08 and 2007 YKCA 10. He sought a review of the dismissal of his application and that was dismissed in February of this year (2008 YKCA 3), but the time for the necessary filings was

extended to April 18, 2008. He applied for leave to appeal from the dismissal of his application for a review to the Supreme Court of Canada. His application was dismissed July 24, 2008.

[4] On August 5, 2008, the Registrar of the Court informed Mr. Knol his appeal had been put on the inactive list. Under Rule 46(2), an appeal is to be placed on that list if no certificate of readiness has been filed within a year of the notice of appeal being filed. Pursuant to Rule 46(6), after 180 days on the inactive list (i.e., on the 181st day), subject to any relief that may be granted to an appellant, the appeal stands dismissed as abandoned. On October 2, 2008, the Registrar informed Mr. Knol that, in view of the extension of time afforded him in February to April 18, 2008, the 180-day period commenced to run from that date (rather than the anniversary date of the filing of the notice of appeal in March 2007). He was told that, subject to obtaining a further extension of time, his appeal would stand abandoned on October 15, 2008. His application to have his appeal removed from the inactive list was heard by Frankel J.A. on October 14, 2008.

[5] On hearing the application, Frankel J.A. said:

[9] As matters stand today, Mr. Knol has not filed the transcripts or any of the other material necessary to prosecute his appeal. He filed his motion to remove the appeal from the inactive list on October 9, 2008. The affidavit filed in support of this application does not contain any information as to steps Mr. Knol has taken, or proposes to take, to obtain and file that material in a timely way. In his submissions to me today, Mr. Knol indicated that he wishes to proceed with the appeal in the absence of the transcripts, but still has provided no indication as to when he will be in a position to file the necessary material.

[10] It is apparent that Mr. Knol is unwilling to abide by either this Court's rules or its orders. It is now more than 19 months since

Mr. Knol filed his notice of appeal, and more than six months since the last extension he was granted by this Court expired. He has had ample time to perfect his appeal, and is undeserving of any further indulgence in this regard.

[6] Mr. Knol has still not filed an appeal record, appeal book, transcripts of evidence, or a factum, all of which are now more than seven months overdue. Indeed he says he cannot afford to obtain the transcripts. They will not be filed. In considering his first application for a review, this Court made it very clear to Mr. Knol that his continued failure to comply with procedural requirements would certainly render his appeal subject to being dismissed:

[14] The appellant Mr. Knol seems to have been proceeding for some time under a mistaken notion that somehow or other he can be excused from the requirement to obtain and file the necessary appeal materials. This judgment should make clear to him that this is not so. I consider that he should presently be given some additional time to take steps towards perfecting his appeal. I would order that he have until April 18, 2008 to file the necessary transcript and appeal book material. If, by that time, he has not made the necessary filings, it appears to me that the respondent would have a powerful case on any application to dismiss this appeal on account of a failure on the part of the appellant to comply with the filing requirements to perfect his appeal.

[7] It is well recognized that on this review the decision of Frankel J.A. is not to be interfered with unless it is shown that an error in principle has been made or the factual circumstances have been misunderstood.

[8] Mr. Knol is hard pressed to point to any error or misunderstanding attributable to Frankel J.A. The considerations were whether there was an inordinate unexplained delay on the part of the appellant in the prosecution of the appeal and

whether the respondent suffered any prejudice in the result, citing *Frew v. Roberts* (1990), 44 C.P.C. (2d) 34 (B.C.C.A.). The delay was indeed inordinate and there is no acceptable explanation. Mr. Knol has simply done nothing to comply with the extensions afforded him to file what he must to prosecute his appeal. Ms. Piper submits prejudice can, in the circumstances, be presumed unless it is rebutted, citing *Busse v. Robinson Morelli Chertkow*, 1999 BCCA 313, 63 B.C.L.R. (3d) 174. Whether that is so, she has been denied the orderly conduct of an appeal which, although it may have had only a marginal prospect of success, has clouded the certainty of the estate's interest in the subject property for an unacceptable period of time.

[9] I see no error in principle in the disposition of Mr. Knol's application, nor any misunderstanding of the facts.

[10] I would dismiss the application for a review.

[11] **PROWSE J.A.:** I agree.

[12] **KIRKPATRICK J.A.:** I agree.

[13] **PROWSE J.A.:** The application is dismissed.

"The Honourable Mr. Justice Lowry"