

In the Court of Appeal of Alberta

Citation: Turner v. Alberta Treasury Branches, 2005 ABCA 251

Date: 20050720
Docket: 0501-0015-AC
Registry: Calgary

Between:

Response Energy Corporation

Not a Party to the Appeal
(Plaintiff)

- and -

Gregory Warren Turner

Respondent
(Appellant)
(Defendant)

- and -

Alberta Treasury Branches

Applicant
(Respondent)
(Respondent)

**Reasons for Decision of
The Honourable Madam Justice Elizabeth McFadyen
In Chambers**

Application for Security for Costs
(Q.B. Docket: #0101-17077)

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[1] The respondent on this appeal seeks an order for security for costs against the appellant, and an order directing the appellant forthwith to pay the costs which were awarded to the respondent in the order under appeal.

[2] Conrad J.A. in *Freyberg v. Fletcher Challenge Oil and Gas Inc.*, 2003 ABCA 208, 330 A.R. 130 set out the principles to be applied on an application for security for the costs of an appeal:

- (1) The general rule is that security for costs is not ordered on appeal;
- (2) Security for costs may be ordered where the applicant can establish special circumstances. Special circumstances may be found where the appeal is weak and it is unlikely that the respondent, if successful on the appeal, will be able to recover costs from the appellant; and
- (3) The court must balance the economic security rights of the party seeking security against the right to appeal.

Conrad J.A. concluded, at para 17: "... where there is a reasonable prospect of success, a party's right to judicial access takes priority over questions of security, and the case of "special circumstance" fails, notwithstanding an appellant's impecuniosity."

[3] The respondent says that the special circumstances here include the appellant's impecuniosity and the fact that claims in the litigation arise from the appellant's admitted dishonesty in dealing with his former employer's funds. The respondent also suggests that the appellant misled the court when he obtained a stay of enforcement proceedings on the ground that he would lose his employment if his current employer discovered that the judgment against him related to theft from his former employer.

[4] I am not persuaded that the appeal is doomed to fail. The nature of the claim and the evidence of the appellant's dealings with his current employer's funds are not sufficient "special circumstances" for me to set aside the general rule regarding security for costs. The application for security for costs is dismissed. I make no order respecting payment of trial costs.

Application heard on May 25th, 2005

Reasons filed at Calgary, Alberta
this 20th day of July, 2005

McFadyen J.A.

Appearances:

A. A. Fares
for the Appellant on appeal
Respondent on motion

Douglas N. Tkachuk
for the Respondent on appeal
Applicant on motion