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Tieu v Layeghpour, 2024 ABKB 396

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Court of King's Bench of Alberta

Citation: Tieu v Layeghpour, 2024 ABKB 396

2024 ABKB 396 (CanLII)

Date:
Docket: 2203 11754
Registry: Edmonton

Between:

Phuong Le Tieu

Applicant

- and -

Shahin Layeghpour

Respondent

Reasons for Decision
of the
Honourable Justice Donald Lee

Background

[1] A few weeks after a tenancy began in a residential condo unit, a conflict arose between the parties. As a result, the landlady Ms. Tieu ("Tieu") issued an eviction notice to the tenant Mr. Layeghpour ("Layeghpour"). On April 15, 2022, by agreement, Layeghpour moved out of the rental unit.

[2] Layeghpour then filed a dispute to the Residential Tenancy Dispute Resolution Service ("RTDRS") on April 12, 2022. A telephone hearing was to be held on July 25, 2022.

[3] According to Tieu, this Notice of Hearing was served on her on April 15, 2022, the same day Layeghpour moved out. Tieu deposes in her affidavit that she never met Layeghpour in person again after April 15, 2022. Layeghpour deposed that he served her further court documents again in person in August and September 2022.

[4] On August 2, 2022 the RTDRS hearing officer issued his decision with respect to the tenancy dispute in favor of Layeghpour. Layeghpour received the decision, and he filed this decision at the Court of King's Bench on August 2, 2022. The decision ordered Tieu to pay Layeghpour $1,550. Layeghpour then filed an Affidavit of Service on August 18, 2022, asserting service of the decision was effected in person by himself on Tieu on August 2, 2022, at the Condo address.

[5] On August 30, 2022, Layeghpour filed an Application seeking financial disclosure from Tieu for the purpose of enforcing the judgement. This Application was returnable September 15, 2022.

[6] Layeghpour filed a second (2nd) Affidavit of Service, alleging that he had served an Application returnable on September 15th and Affidavit on Tieu on August 30, 2022, in person himself at the Condo address.

[7] On September 15, 2022, Layeghpour attended Court before my colleague Justice Aloneissi. Tieu did not attend, and Justice Aloneissi granted an Order directing Tieu to attend Court in person on September 29, 2022.

[8] On September 29, 2022, Layeghpour filed the third (3rd) Affidavit of Service, alleging that he served Justice Aloneissi's Order on Tieu in person himself on September 22 at the Condo address.

[9] On September 29, 2022, Layeghpour attended Court before me and sought an Order to have Tieu arrested for contempt. Tieu was again not in attendance for this Court appearance.

[10] Tieu was arrested by the Edmonton Police Officer on the evening of October 14, 2022, and she appeared before this Court on October 17, 2022. She was released immediately from detention.

[11] Tieu hired counsel after she was detained by the Police, who later advised her the reason for her arrest. She deposes that it was only after her arrest that she discovered the RTDRS judgement, the Application for Financial Disclosure, and the Aloneissi and Lee Court Orders.

[12] Tieu went through two different lawyers to bring an Application seeking to set aside my Order granted on September 29, 2022. This decision deals with Tieu's application to set aside my Order.

Issue

[13] The main issue in this hearing is whether Tieu received actual service as alleged by Layeghpour in his three Affidavits of Service.

The Law

[14] To find contempt, three elements must be established beyond a reasonable doubt: ***Carey v Laiken***, 2015 SCC 17 (CanLII):

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1. The Order must state clearly and unequivocally what should and should not be done;
2. The party alleged to have breached the order must have had actual knowledge of it; and
3. The party allegedly in breach must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels.

[15] In the *Alberta Evidence Act*, RSA 2000, c A-18, s 41.3, a person seeking to introduce an electronic record as evidence has the burden of proving its authenticity by evidence capable of supporting a finding that the electronic record is what the person claims it to be.

[16] Pursuant to s 41.4(2) of the *Alberta Evidence Act*, the integrity of an electronic record may be proved by evidence of the integrity of the electronic records system by or in which the information was recorded or stored, or by evidence that reliable encryption techniques were used to support the integrity of the electronic record.

Analysis

[17] Layeghpour relies on his three affidavits:

a. Affidavit filed August 30, 2022, alleging that he served Tieu with the RTDRS judgement on August 2 when she and Marc Berzins (Tieu's lawyer/employer), were at the Condo. Layeghpour presented a photo as evidence showing Tieu and a man wearing a sweater and a leather jacket holding some papers;

b. Affidavit filed September 15, 2022, alleging service on August 30, 2022, of the civil enforcement application. Layeghpour asserted that service was done in person between 9 – 9:30 pm at the Condo address, and he presented an audio clip as proof of service;

c. Affidavit filed September 29, 2022, alleging service on Tieu on September 22, 2022, of Justice Aloneissi's Order. Layeghpour asserted that service was again done in person between 9 – 9:30 pm at the Condo address, and he presented an audio clip as proof.

[18] Tieu denies having received any of the documents as alleged by Layeghpour prior to her arrest in October 2022. Her evidence includes:

a. A title certificate showing that she and another individual (her partner) jointly own another property in West Edmonton where she actually lives. Tieu deposes that she has never lived overnight at the rental Condo and has not met with Layeghpour in person after April 15, 2022, when he served her with the RTDRS notice of hearing.

b. Tieu's lawyer/employer Marc Berzins ("Berzins"), who previously worked as a lawyer for many years, swore an affidavit deposing that Tieu's payroll records go to an address other than the condo rental. Mr. Berzins also deposes that he was the person in the photo presented by Layeghpour, and the photo must be taken on April 15, 2022, not August 2,

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> 2022 as alleged by Layeghpour, because he only met Layeghpour in person one time on April 15, when Layeghpour moved out of the Condo. April 15th was when the initial notice of the RTDRS Hearing Notice was served.

[19] Tieu originally came from Vietnam and her English is rather limited, as is evident from the text messages she sent to Layeghpour. At the hearing, her present lawyer Ms. Wang believes that her poor English may have hindered her from understanding some of the questions and in properly giving answers. Also, the hearing officer noted some difficulty in understanding her.

[20] On the other hand, Layeghpour initially appears to be well-spoken, and articulate. For example, during the course of this dispute, he served a Calder Bank offer on Tieu offering to settle the present matter for $1000, and now he seeks double costs.

[21] With respect to the present matter, I note one of Tieu's previous lawyers wrote the following to Layeghpour "I have no idea why I should keep ongoing communication with a hostile person particularly when he is and has been threatening me by filing a complaint at the Law Society or sue me in court, which won't bother me at all. In any event, I am prepared to honor my promise of giving you a $200 gift if you and Fendi can settle the matter amicably". Tieu is also referred to as "Fendi" by some of her acquaintances.

[22] Layeghpour's address for service in his Affidavits of Service show an address in Lloydminster. He refused to answer the question when asked where he resided in Edmonton when he traveled from Lloydminster to Edmonton to serve documents on Tieu.

[23] The parties used to communicate through text message in March and April of 2022, but there were no text messages exchanged between the parties discussing meeting up at the condo in August and September of 2022.

[24] Layeghpour has not provided any evidence capable of supporting that the photo was firstly taken on August 2, 2022, or that the audio clips were originally created on the dates that were alleged. A screenshot of a photo with an August 2 date is not sufficient, as Layeghpour should have the meta-data. Counsel for Tieu had sought the original records from Layeghpour, but it was never provided: see Affidavit of Joslyn Kozicki, filed December 5, 2023, Exhibit B. Therefore, the photo and audio clips are of limited evidentiary value.

[25] On the other hand, Berzins evidence also showed that Tieu often sought help from him. Berzins helped Tieu write the eviction notice to Layeghpour, and he came to the Condo with Tieu on the day when Layeghpour was to move out. Thus, it would seem implausible that Tieu would simply ignore the King's Bench applications and a court order requiring her to appear, and to have never sought advice from Berzins in relation to the applications. The logical explanation is that service was never effected.

[26] Layeghpour lived at the Condo as a renter, and there was no evidence that Tieu ever lived there or spent the night at the Condo. Even at the Tenancy hearing, the hearing officer noted in his decision that Tieu would not stay overnight at the Condo. Tieu deposes she never rented the condo room again until after September 2022. Layeghpour in his Affidavit filed August 3, 2023 attached text messages, wherein he had complained that the condo was cold, and the water was not hot, and Tieu had to come to the condo to verify his complaints.

[27] There is also the question why Layeghpour believed that he could serve documents on Tieu at the Condo on seemingly random days. He chose not to serve any of the documents by

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registered mail or via text messages. This Court allows alternative ways to serve documents, and Layeghpour appears to be well versed with the court process. Counsel points out that Layeghpour was served substitutionally in another legal matter, ***Layeghpour v Rashidi***, 2023 ABKB 674.

[28] It would also have been simple for Layeghpour to get a Substitutional Service Order, particularly since he claims that he was living in Lloydminster at the time. It seems unusual for a person to actually come into Edmonton and spend the day in the City hoping to catch Tieu at her rental property where she did not even reside.

[29] It also seems unusual that Layeghpour never sent any text messages to Tieu asking her to meet up (so he could serve documents). There is no explanation why he didn't take photos or videos on August 30 or September 22, 2022 to show that he was indeed at the Condo location, especially since it is clear that Layeghpour takes photos, videos, and audios.

[30] Tieu's Counsel also submits that the female voice on Layeghpour's audio clip may be from another one of his cases described below. Tieu's counsel submits Layeghpour's credibility generally is in question, given the reported decisions in ***Layeghpour v Rashidi***, 2023 ABKB 674, and the Court of Appeal decision in ***Layeghpour v K.M.K***., 2023 ABCA 76.

[31] Berzins deposed that Layeghpour's photo must have been taken in April 2022, not on August 2, as Layeghpour deposes since he only met Layeghpour once on April 15, 2022. He pointed to his attire in the photo and noted he would have not worn a sweater and a leather jacket on August 2nd, a day that was over 20 Celsius. He produced some official temperature records for that day.

[32] Berzins was a practicing lawyer for many years at the widely respected Wood Moir law firm in Edmonton. Due to his past professional duties, Berzins clearly understands the consequences of lying in an affidavit, and there appears to be no reason for him to lie or to be mistaken in this matter.

[33] There is nothing on the record to impeach Berzins' credibility before me. Berzins confirmed that Tieu did not advise him of any of the Court proceedings until after her arrest, which would be consistent with the fact she was never served with any notice of those proceedings. Berzin's affidavit evidence must be given considerable weight in these proceedings.

Conclusion

[34] This Court finds that Layeghpour failed to prove service was effected on Tieu on August 2nd, August 30th or on September 22nd. As a result, my Contempt Order must be set aside.

[35] Further this Court finds that Tieu, has provided evidence which on the balance of probability establishes that Layeghpour came to court on September 29, 2022, seeking extraordinary relief (having her arrested) and $1000 in costs, knowing that he did not actually serve Tieu.

[36] Certain misconduct during litigation that is reprehensible, scandalous, or outrageous warrant Solicitor and Client Costs, see ***Young v Young***, (1993) 4 SCR 3 at 134; and ***FIC Real Estate Fund Ltd v Phoenix Land Ventures Ltd***., 2016 ABCA 303 (CanLII) at paras 4-6.

[37] This Court concludes that Layeghpour presented deceptive evidence to the Court at hearing on September 29, 2022, in an attempt to get Tieu arrested. As a result of his conduct,

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Tieu was detained for three days. This is a very serious attack on integrity of our judicial system and on the dignity of Tieu and this Court.

[38] This Court orders that the contempt Order granted on September 29, 2022, shall be forthwith set aside and the $1,000 paid into Court by Tieu shall be released to Tieu. This Court further awards Tieu her reasonable solicitor client costs.

Heard on the 17th day of May, 2024.
Dated at the City of Edmonton, Alberta this 27th day of June, 2024.

Donald Lee
J.C.K.B.A.

Appearances:

Monica Wang
for the Applicant Tieu

Shahin Layeghpour SRL
Respondent

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