

COURT OF APPEAL FOR ONTARIO

CITATION: Avedian v. Enbridge Gas Distribution Inc. (Enbridge Gas
Distribution), 2024 ONCA 241
DATE: 20240403
DOCKET: M54836 (COA-23-OM-0355)

Roberts, George and Monahan J.J.A.

BETWEEN

Bedros (Peter) Avedian, Claudio Petti and Mario D'Orazio

Plaintiffs (Moving Parties)

and

Enbridge Gas Distribution Inc. operating as Enbridge Gas Distribution*, Enbridge
Solutions Inc. operating as Enbridge Energy Solutions, Enbridge Inc.* , Lakeside
Performance Gas Services Ltd. operating as Lakeside Gas Services*

Defendants (Responding Parties*)

and

Alpha Delta Heating Contractor Inc. and Aubrey Leonard Dey

Third Parties (Responding Parties)

and

TQB Heating and Air Conditioning Inc.* , Brentol Bishop a.k.a. Brent Bishop* ,
Enbridge Solutions Inc. operating as Enbridge Energy Solutions and
Enbridge Inc.*

Fourth Parties (Responding Parties*)

Christine Carter, for the moving parties

James G. Norton, for the responding parties, Enbridge Gas Distribution Inc. operating as Enbridge Gas Distribution and Lakeside Performance Gas Services Ltd. operating as Lakeside Gas Services

C. Kirk Boggs, for the responding parties, Alpha Delta Heating Contractor Inc. and Aubrey Leonard Dey

Christopher I.R. Morrison, for the responding parties, TQB Heating and Air Conditioning Inc. and Brentol Bishop, a.k.a. Brent Bishop

David Reiter and Patrick Copeland, for the responding party, Enbridge Inc.

Heard: March 28, 2024

REASONS FOR DECISION

[1] The moving parties seek to review the January 23, 2024 order of a single judge of this court (“the motion judge”). At the close of the moving parties’ submissions, we dismissed the motion with reasons to follow. These are our reasons.

[2] The motion judge dismissed the moving parties’ motion for a stay of two interlocutory orders of a case management judge of the Superior Court of Justice (“interlocutory orders”).

[3] The interlocutory orders vacated the dates for a pre-trial conference and trial in the moving parties’ underlying action against the responding parties and allowed the responding parties to bring a motion for directions before trial. In accordance with established practice, the Divisional Court dismissed the moving parties’ motion for leave to appeal the interlocutory orders without giving reasons.

[4] The moving parties commenced a motion before this court for leave to appeal the Divisional Court's dismissal of their leave motion and sought a stay of the interlocutory orders. The moving parties did not seek a stay of the Divisional Court's dismissal order. As already noted, the moving parties' motion for a stay of the interlocutory orders was dismissed by the motion judge.

[5] We are not persuaded that there is any basis to intervene with the motion judge's order, with which we agree. The moving parties have not shown that the motion judge made any factual or legal errors. In particular, we reject the moving parties' submission that the motion judge determined their motion for leave to appeal and thereby exceeded her jurisdiction. On the contrary, the motion judge expressly said that was not her task. Rather, as she was required to do under *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 S.C.R. 199, the motion judge assessed the merits of the leave motion to determine whether there was a serious issue to be tried. We agree, for the reasons that she expressed, that there was not, and that the moving parties failed to demonstrate that they would suffer irreparable harm if the stay were not granted, or that the balance of convenience favoured them. It was not in the interests of justice to order a stay. Absent error, it is well-established that her decision is owed considerable deference on a panel review.

[6] We also agree with the responding parties that the moving parties' stay motion is now moot. The vacated pre-trial and trial dates are long past, and the

disputed motion for directions, as well as the moving parties' recusal motion and motion to strike pleadings, have been heard and are under reserve. No purpose would be served at this point to stay the interlocutory orders. Such a stay would not prevent the case management judge from releasing her decision on the motions under reserve. We reject the moving parties' suggestion that the release of the reserved motions should be stayed, which was not relief sought before the motion judge or requested in their notice of motion before this panel. Depending on any steps taken in response to that order, new pre-trial and trial dates can now be set.

[7] Accordingly, we dismiss the review motion. The moving parties shall pay in total to the responding parties who are seeking costs the all-inclusive amount of \$8,500 as their costs of this motion.

"L.B. Roberts J.A."
"J. George J.A."
"P.J. Monahan J.A."