

COURT OF APPEAL FOR ONTARIO

CITATION: M. Singh Law Professional Corporation v. River Green (Thunder Bay)
Inc., 2024 ONCA 201
DATE: 20240319
DOCKET: COA-23-CV-0571

Pepall, Sossin and Dawe JJ.A.

BETWEEN

M. Singh Law Professional Corporation

Appellant

and

River Green (Thunder Bay) Inc.

Respondent

Manjit Singh, for the appellant

No one appearing for the respondent

Heard and released orally: March 14, 2024

On appeal from the order of Justice F. Bruce Fitzpatrick of the Superior Court of Justice, dated April 17, 2023, with reasons reported at 2023 ONSC 2335.

REASONS FOR DECISION

[1] The appellant, M. Singh Law Professional Corporation, appeals from the April 17, 2023 order of Fitzpatrick J. dismissing its motion for a charging order under s. 34 of the *Solicitors Act*, R.S.O. 1990, c. S.15.

[2] Section 34(1) of the *Solicitors Act* provides that:

Where a solicitor has been employed to prosecute or defend a proceeding in the Superior Court of Justice, the court may, on motion, declare the solicitor to be entitled to a charge on the property recovered or preserved through the instrumentality of the solicitor for the solicitor's fees, costs, charges and disbursements in the proceeding.

[3] The appellant was retained to act for the respondent after the respondent's landlord had obtained default judgment against the respondent. The appellant obtained an order setting aside the default judgment and served a statement of defence and counterclaim on behalf of the respondent. Although the appellant then was successful in obtaining an order dismissing the landlord's claim and noting the landlord in default on the counterclaim, it was unsuccessful in obtaining a default judgment against the landlord that included a provision that the respondent's property was restored to the power and control of the respondent. The motion judge permitted the appellant to amend his client's pleading and noted that the landlord would not be able to participate in the defence of the amended counterclaim.

[4] This court in *Weenen v. Biadi*, 2018 ONCA 288, 141 O.R. (3d) 276, set out the three-part test for entitlement to a charging order under the *Solicitors Act*: at para. 14. The solicitor must demonstrate, among other things, that the property was "recovered or preserved" through the instrumentality of the solicitor.

[5] As is clear from s. 34 of the *Solicitors Act*, the order is discretionary in nature.

[6] Here, the motion judge found that the property had already been preserved 18 months earlier by virtue of an order in other proceedings that he was case managing. He exercised his discretion to refuse the request for a charging order. We see no error in his conclusion.

[7] Moreover, the appellant could not succeed in any event. Although the appellant certainly took steps designed to ultimately recover or preserve property, it was unsuccessful in that regard. It did not obtain any order either recovering or preserving any property. In fact, the declaratory relief sought to that effect was refused.

[8] The motion judge was correct in his conclusion that a charging order ought not to be granted.

[9] For these reasons, the appeal is dismissed.

“S.E. Pepall J.A.”
“L. Sossin J.A.”
“J. Dawe J.A.”