COURT OF APPEAL FOR ONTARIO

CITATION: 1261271 B.C. Ltd. v. Hanover PV Limited Partnership, 2024 ONCA 207
DATE: 20240319
DOCKET: COA-23-CV-0723

2024 ONCA 207 (CanLII)

Miller, Copeland and Gomery JJ.A.

BETWEEN

1261271 B.C. Ltd.

Applicant (Appellant)

and

Hanover PV Limited Partnership, Solblack SFN Inc., Minten SFN Limited Partnership, 7550 LaSalle Limited Partnership, 5868 Orr Lake Limited Partnership, Boost Power II Limited Partnership, Enviro Park Solar Ltd., Hay Bay Solar LP, Great West Energy Limited Partnership, Great West Energy II Limited Partnership, Hanover PV GP Inc., Minten SFN GP Inc., 7550 LaSalle GP Inc., 5868 Orr Lake GP Inc., Boost Power II GP Inc., Hay Bay GP Inc., Greatwest Energy GP Inc.[1], and Great West Energy II GP Inc.

Respondents (Respondents)

Jeffrey Levine, for the appellant

Chris Burr and Jake Harris, for the respondents

Heard and released orally: March 18, 2024

On appeal from the judgment of Justice Peter J. Osborne of the Superior Court of Justice, dated June 8, 2023.

REASONS FOR DECISION

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[1] In some materials filed with the court, the respondent's name is spelt "Great West Energy GP Inc."

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[1] The appeal is dismissed. The application judge did not commit a reversible error, in our view, in finding that the granting of the impugned security interest was oppressive to the respondents.

[2] In *FNF Enterprises Inc. v. Wag and Train Inc.*, 2023 ONCA 92, at para. 31, this court summarized the two requirements for an oppression remedy claim. Although the experienced commercial application judge did not cite caselaw on oppression, his findings show he was alive to these requirements.

[3] As stated in *FNF Enterprises*, a party seeking an oppression remedy must first "identify the expectations it claims have been violated by the conduct at issue and show that those expectations were reasonably held." The application judge found that the respondents put the appellant's predecessor in interest on notice that it did not have "*carte blanche* to do as it wished" with respect to the respondent entities. This amounts to a finding of an expectation that the appellant's predecessor would not engage in conduct that was prejudicial to them. Given Gilmore J.'s 2022 order and the findings underlying it, this expectation was reasonable.

[4] Second, a party claiming an oppression remedy must show that its reasonable expectations were "violated by corporate conduct that was oppressive or unfairly prejudicial to or that unfairly disregarded the interest of any security holder, creditor, director, or officer" (*FNF Enterprises*, at para. 31). The application

judge found that the impugned security was granted “in admitted self-interest”, “with a view to prejudicing” the parties which rightfully should have controlled the respondents at the time, by making already-existing debt “secured and subject to the rights granted … pursuant to the terms of the 2021 Security”.

[5] Based on the application judge’s findings, he had a sufficient basis to conclude that the granting of the impugned security was oppressive. This was in turn a sufficient ground to grant the application, independent of the application judge’s other bases for doing so.

[6] In light of this, it is unnecessary to consider whether the appellant’s other grounds of appeal have any merit.

[7] The respondents are awarded $15,000 in costs on the appeal, inclusive of HST and disbursements, pursuant to the parties’ agreement.

“B.W. Miller J.A.”
“J. Copeland J.A.”
“S. Gomery J.A.”

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