

COURT OF APPEAL FOR ONTARIO

CITATION: ID Inc. v. Toronto Wholesale Produce Association, 2024 ONCA 381

DATE: 20240513

DOCKET: M54934 & M54984 (COA-24-CV-0070)

van Rensburg, Sossin and Dawe JJ.A.

BETWEEN

ID Inc.

Plaintiff

(Moving Party/Responding Party/
Respondent/Appellant by Cross-Appeal)

and

Toronto Wholesale Produce Association* and Strategycorp

Defendants

(Moving Party*/Responding Party*/
Appellant*/Respondent by Cross-Appeal*)

James Zibarras, Richard MacGregor, and Amanda Cutinha, for the moving party
(M54934)/responding party (M54984)

David E. Greenwood and Christopher McClelland, for the responding party
(M54934)/moving party (M54984)

Heard and released orally: May 10, 2024

REASONS FOR DECISION

[1] This is a motion by ID Inc. to quash part of an appeal by the Toronto Wholesale Produce Association (“the TWPA”), and if it is successful, a declaration or order that any stay that remains in place in respect of the remaining appeal be

lifted. The TWPA opposes the motion. The TWPA has brought its own motion seeking an extension of time to appeal if necessary.

[2] The TWPA delivered a notice of appeal on January 15, 2024, appealing the judgment of Merritt J. (the “trial judge”) dated January 9, 2024. Paragraph 2 of the judgment orders the TWPA to pay ID Inc. damages of \$949,899 for breach of contract. Paragraph 3 orders the payment of prejudgment interest in the sum of \$1,803,244. Paragraph 6 orders post-judgment interest at the contractual rate of 26.8% per annum from August 25, 2023.

[3] ID Inc. asserts that the time to appeal the damages part of the judgment ran from August 25, 2023 because that was the date the trial judge released her reasons finding the TWPA liable for breach of contract, i.e.: that was when the judgment was “pronounced”. ID Inc. says that for this reason the TWPA is out of time to appeal. ID Inc. also contends that the TWPA does not meet the test for an extension of time to appeal.

[4] ID Inc.’s motion to quash is dismissed.

[5] The time to appeal runs from the date of the judgment. While ID Inc. submits that there are two judgments (one for damages dated August 25, 2023 and the other for interest dated January 9, 2024, which is the date that the trial judge released her decision on interest), in fact there is a single judgment. At a case conference on December 7, 2023 the trial judge refused ID Inc.’s request that she

sign a separate standalone judgment with a date of August 25, 2023 relating solely to the August 25, 2023 reasons and the damages awarded against the TWPA. Instead, she released one judgment dealing with all issues except for costs.

[6] In her reasons of August 25, 2023 the trial judge specifically reserved the quantum for one head of damages to be determined if the parties could not agree (see para. 340). This issue was ultimately determined by the trial judge on October 24, 2023. In the meantime, a dispute had arisen with respect to the rate of prejudgment interest.

[7] Section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43 provides that prejudgment interest is included in an order. Typically, this will be a straightforward calculation, in which case the total amount, including prejudgment interest, will be included in the order under appeal. In this case however, when it became apparent that ID Inc. was claiming the contractual rate of interest and the TWPA disagreed, the amount of prejudgment interest fell to be determined by the trial judge.

[8] The effect was that, although she had decided liability and damages, until the contested issue of prejudgment interest was determined the matter was not finalized. While the trial judge in her discretion could have acceded to ID Inc.'s request for a separate judgment for damages, she refused to do so. As a result, there is simply no basis for this court to treat the single judgment as though it were two judgments.

[9] Accordingly, the appeal is not out of time. ID Inc.'s motion is dismissed and the cross-motion is dismissed as moot.

[10] Costs to the TWPA in the all-inclusive sum of \$10,000.

“K. van Rensburg J.A.”

“L. Sossin J.A.”

“J. Dawe J.A.”