

COURT OF APPEAL FOR ONTARIO

CITATION: Sternberg v. Cresford Capital Corporation, 2024 ONCA 283

DATE: 20240415

DOCKET: M54935 (COA-23-CV-0844)

Benotto J.A. (Motions judge)

BETWEEN

Gerald Sternberg

Plaintiff/Defendant to the Counterclaim
(Appellant in Appeal)

and

Cresford Capital Corporation

Defendant/Plaintiff by Counterclaim
(Respondent in Appeal)

Sheila Block and Jonathan Silver, for the plaintiff/defendant to the counterclaim

Gavin J. Tighe and Alison Farley, for the defendant/plaintiff by counterclaim

Heard: In writing

ENDORSEMENT

[1] The appellant moves for an order authorizing him to file a reply factum. The appeal is scheduled to be heard on April 29, 2024.

[2] The appellant submits that the respondent raised two new issues in its responding factum: (i) whether his secondary argument that the matter is not properly raised on the appeal; and (ii) whether the doctrine of merger applies.

[3] The respondent says that it has not raised a new issue and that the doctrine of merger “ought to have been anticipated” by the appellant.

[4] A reply factum is not the norm, hence leave is required. But where, as here, new issues are raised the court is entitled to prepare in advance for the full scope of oral submissions. The parties in turn benefit from a hearing that focuses squarely on the issues to be decided.

[5] The responding factum does raise new issues. The appellant may file his reply factum. The respondent, having raised and addressed the issues in its factum is not entitled to a sur-reply factum.

[6] Costs of this motion are reserved to the panel hearing the appeal.

“M.L. Benotto J.A.”