

COURT OF APPEAL FOR ONTARIO

CITATION: Mouralian v. Groleau, 2024 ONCA 563

DATE: 20240712

DOCKET: M55227 (C70741)

Lauwers J.A. (Motions Judge)

BETWEEN

Natalie Mouralian

Plaintiff
(Appellant/Moving Party)

and

Isabelle Groleau

Defendant
(Respondent/Responding Party)

Nathalie Mouralian, acting in person

Matthew Morden, for the respondent/responding party

Heard: July 12, 2024

ENDORSEMENT

[1] Ms. Mouralian is self-represented. She brought an action for the return of her \$70,000 deposit following a failed real estate transaction in which she was the buyer. The live issue in the case was whether relief from forfeiture of her deposit should be granted. The Superior Court judge declined to grant relief from forfeiture (2022 ONSC 2925). This court dismissed Ms. Mouralian’s appeal (2024 ONCA 342).

[2] Upon learning that this court had dismissed her appeal, Ms. Mouralian immediately advised the respondent's counsel, Mr. Morden, that she would be seeking leave to appeal to the Supreme Court. Despite this notice, Mr. Morden arranged for the transfer of the deposit from the real estate broker's account to his client, Ms. Groleau, well before the expiry of the 60-day deadline for Ms. Mouralian to seek such leave. Mr. Morden's action in arranging for the release of the deposit was improper in the circumstances. He ought to have corresponded with Ms. Mouralian about her intentions before arranging for the release of funds. However, the improper release of the deposit to Ms. Groleau does not affect the merits of this motion for a stay of this court's decision pending the outcome of Ms. Mouralian's application for leave to appeal to the Supreme Court.

[3] I deny Ms. Mouralian's motion for a stay, for the reasons that follow.

A. THE GOVERNING PRINCIPLES

[4] The test for a stay pending appeal is well established. The applicant must show:

1. there is a serious issue to be adjudicated on its proposed appeal;
2. it will suffer irreparable harm if the stay is not granted; and
3. the balance of convenience favours granting the stay.

[5] For a stay pending appeal to the Supreme Court, the first requirement, that there is a serious issue to be adjudicated, must be assessed in light of that court's

stringent leave criteria. The governing principles were set out in *BTR Global Opportunity Trading Limited v. RBC Dexia Investor Services Trust*, 2011 ONCA 620, 283 O.A.C. 321, at paras. 18-19:

Ordinarily, the threshold for showing a serious issue to be adjudicated is low. However, the criteria for granting leave to appeal to the Supreme Court of Canada add another layer to this component of the test. Under s. 40(1) of the *Supreme Court Act*, R.S.C. 1985, c. S-26, the Supreme Court of Canada typically grants leave to appeal only in cases of public or national importance. Thus, a provincial appellate court judge hearing a motion for stay pending leave to appeal to the Supreme Court of Canada must take account of the stringent leave requirements in the *Supreme Court Act*: see *Merck & Co. v. Nu-Pharm Inc.* (2000), 5 C.P.R. (4th) 417 (F.C.A.) and *Ontario Public Service Employees Union v. Ontario (A.G.)* (2002), 158 O.A.C. 113.

The Supreme Court of Canada itself decides when leave should be granted and does not give reasons for doing so. As Rothstein J.A. noted in *Merck*, this puts provincial appellate court judges in a “somewhat awkward position.” Nonetheless, the stay test requires that I make some preliminary assessment of the merit of the leave motion.

[6] These principles have been followed consistently by this court: see e.g., *Iroquois Falls Power Corporation v. Ontario Electricity Financial Corporation*, 2016 ONCA 616, at para. 16; *Alectra Utilities Corp. v. Solar Power Network Inc.*, 2019 ONCA 332, 145 O.R. (3d) 794, at paras. 10-13; and *Sase Aggregate Ltd. v. Langdon*, 2023 ONCA 644, at paras. 12-13.

B. APPLICATION

[7] Ms. Mouralian said that the notice of motion for the stay was drafted by a law student because she could not afford a lawyer. It would appear to be based on a leave application, which was designed to entice the Supreme Court into granting leave, but there are some significant problems with it.

[8] In her notice of motion, Ms. Mouralian suggests that the Superior Court of Justice erred in law in three ways:

1. when it declined to grant the hearing for the Appellant and granted the Motion for the Respondent to squash her claim by granting a summary judgement for an order issued on May 12, 2022 under the *Real Estate Business Brokers Act*. (REBBA)
2. What is the scope and content of the *Wastech* duty to exercise a contractual discretion in good faith when determining whether conditions precedent are satisfied in an agreement of purchase and sale, in particular where such conditions contain clear, objective criteria for compliance?
3. In what circumstances is the court entitled to rely on post-contractual events to inform the interpretation of a contract?

[9] These are all interesting issues, but they do not arise on the facts of this case. The argument about the proper application of the recently repealed *Real Estate and Business Brokers Act*, R.S.O. 1990, c. R.4, was never made before the Superior Court of Justice, nor before this court. Likewise, the scope and content of the *Wastech* duty (from *Wastech Services Ltd v. Greater Vancouver Sewerage*

and Drainage District, 2021 SCC 7, [2021] 1 SCR 32) to exercise a contractual discretion in good faith is not an issue in this case and was not raised before the Superior Court or in this court. This is also true for the third ground concerning post-contractual events. Similarly, the motion record refers to an order for security for costs, but none was made in this case.

[10] There was nothing especially unusual about this real estate transaction. The trial judge accurately summarized the state of affairs and the actual issues before her at para. 3 of her reasons:

The plaintiff argues that the motion should be dismissed because there is a genuine issue requiring a trial as to whether she should be entitled to relief from forfeiture. In support of this argument she alleges: (i) because the defendant sold the property for substantially more, she has suffered no loss; and (ii) due to the plaintiff's personal circumstances, it would be unconscionable for the defendant to retain the deposit. Those personal circumstances include that the plaintiff entered into the transaction during a period where she was struggling with her mental health, and as such was unable to appreciate the consequences of the agreement; she suffered a concussion after entering into the agreement of purchase and sale but before the intended closing date; and despite best efforts to sell her other properties, she was unable to do so.

[11] This court said: "In sum, the appellant is seeking to relitigate the issues determined by the motion judge without identifying any reversible error made by the motion judge in her analysis or findings. That is not the role of this court."

[12] Ms. Mouralian's oral arguments before me and those in her notice of motion were essentially the same as those before the motion judge and this court on the appeal.

[13] Ms. Mouralian relies primarily on her mental state at the time that the contract was entered into. The motion judge rejected the limited medical evidence Ms. Mouralian tendered. She said, at para. 22:

Against the plaintiff's evidence about her mental state, I must weigh the evidence that suggests there was no inequality of bargaining power. I note the following facts:

- a. The parties had no relationship with each other and had never met when the APS was concluded;
- b. From the defendant's perspective, nothing about the negotiations or the agreement was unusual. She was unaware that the plaintiff was dealing with the loss of her uncle, or that it had triggered memories of her earlier traumatic experiences. She eventually learned that the plaintiff had experienced a death in the family, but only after the APS had been signed;
- c. Each party had a real estate agent advising them. No evidence suggests the defendant was aware that the plaintiff's real estate agent was pressuring her;
- d. The APS was negotiated at arms-length, in a *bona fide* process, with offers passing between the parties; and
- e. The plaintiff was then the owner of two other properties, so had at least some experience buying real estate.

[14] The trial judge concluded that “these factors all suggest that the plaintiff was able to protect her interest in the contracting process.”

[15] The motion judge also had some concerns about the veracity of Ms. Mouralian’s claim about her mental state, given that “the plaintiff testified that she intended to complete the transaction ‘up until the end.’” The motion judge concluded: “Her evidence that she wanted to close the transaction up until the end is inconsistent with her position that she did not understand the consequences of the APS.”

[16] The motion judge concluded, at para. 26:

In any event, it is clear that the defendant had no knowledge of any alleged incapacity of the plaintiff at the time the APS was signed. “Even in cases of mental incompetence, a party seeking to escape the terms of a contract must show not only that he or she was mentally incompetent, but also that the other party knew it” or at least was aware of facts that should have put them on notice that the state of mind of the mentally incompetent person was in question: *Lougheed v. Ponomareva*, 2013 ONSC 4347, at paras. 43-44; *Grant v. Imperial Trust Co.*, [1934] O.W.N. 370 (C.A.); *aff’d* [1935] 3 D.L.R. 660 (S.C.C.).

[17] Ms. Mouralian made all the same arguments in this court, which rejected them for the reasons given by the trial judge. This court also refused Ms. Mouralian’s effort to file fresh evidence concerning her mental capacity at the time of the transaction.

[18] All of the arguments Ms. Mouralian raises are ultimately factual issues, not legal issues, and are unlikely to attract the attention of the Supreme Court. In my view, Ms. Mouralian's chances of success in obtaining leave from the Supreme Court to appeal are remote, at best.

[19] For these reasons, I dismiss Ms. Mouralian's motion for a stay of this court's order pending the outcome of her application for leave to appeal to the Supreme Court.

"P. Lauwers J.A."