COURT OF APPEAL FOR ONTARIO

CITATION: Stayside Corporation Inc. v. Cyndric Group Inc., 2024 ONCA 630
DATE: 20240821
DOCKET: M55256 & M55262 (COA-23-CV-0875)

Gomery J.A. (Motions Judge)

BETWEEN

Stayside Corporation Inc.

Plaintiff (Appellant/Moving Party/Responding Party)

and

Cyndric Group Inc. and Richard Menard

Defendants (Respondents/Responding Parties/Moving Parties)

Charles Guilbault,[1] for the appellant, Stayside Corporation Inc.

Stéphane Émard-Chabot, for the respondents, Cyndric Group Inc. and Richard Menard

Heard: August 19, 2024

ENDORSEMENT

[1] The appellant Stayside Corporation Inc. ("Stayside") is appealing a summary judgment dismissing its action. In the action, Stayside sought specific performance of an agreement of purchase and sale signed with Cyndric Group Inc. and Richard Menard. Under the agreement's terms, Stayside was to purchase half of a property

[1] Mr. Guilbault's name is spelled in various ways in the documents on record and pleadings. No offence is intended if the incorrect spelling has been used in these reasons.

once it was severed. The summary judgment motion judge held that Stayside failed to take steps to obtain the severance in the four years after the agreement was signed and that this amounted to an anticipatory breach. As a result, the respondents were entitled to consider that Stayside had repudiated the agreement.

[2] The hearing of the appeal is set for September 20, 2024.

[3] I heard two motions on August 19, 2024. They were initially before Coroza J.A. on July 24, 2024, together with a motion for removal of Stayside's then counsel of record, Mr. Liston. Coroza J.A. granted the removal motion but adjourned the balance of the issues to permit Stayside to obtain legal advice.

[4] At the hearing, I granted Stayside's motion to be represented by its president, Charles Guilbault, but reserved my decision on the security for costs motion. I have now determined that the latter should be dismissed. These are my reasons on both motions.

Mr. Guilbault's representation of Stayside

[5] The appellant sought an order under r. 15.01(2) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, granting leave to Mr. Guilbault to represent Stayside for the purpose of this appeal.

[6] Mr. Guilbault is the sole director of Stayside, as well as its president, secretary and treasurer. In an affidavit dated July 12, 2024, Mr. Guilbault says that he can capably represent the company based on his lengthy career in real estate

development and his negotiation and drafting of the agreement of purchase and sale with the respondents.

[7] Christine Brooks, Mr. Guilbault's wife and Stayside's sole shareholder, consents to his proposed representation of the company. The respondents do not oppose it.

[8] Rule 15.01(2) provides that a corporation that is party to a proceeding shall be represented by a lawyer, "except with leave of the court". The decision to permit a non-lawyer to represent a company is a discretionary decision made having regard to all relevant circumstances in a particular case. Granting such permission is exceptional: *GlycoBioSciences Inc. (Glyco) v. Industria Farmaceutica Andromaco, S.A., de C.V. (Andromaco)*, 2024 ONCA 481, at para. 6. As noted by Huscroft J.A. in *GylcoBioSciences*, at para. 7, "[p]ermitting a non-lawyer to act … risks creating an undue burden on the respondents and the court. These considerations must be balanced with any concerns that may arise about access to justice".

[9] Mr. Guilbault advised that he will rely on materials already prepared and filed by Mr. Liston at the September 20 hearing. He is prepared to obtain further legal advice on a limited retainer basis should this prove necessary.

[10] At the motion hearing, I expressed some concern about Mr. Guilbault's proposed representation of Stayside given that he admitted misunderstanding

Coroza J.A.'s endorsement. Mr. Guilbault did, however, take steps to prepare for the hearing. Notwithstanding any concern about his grasp of legal procedure, the respondents reiterated that they would like the appeal to be heard as scheduled because they cannot refinance or sell the property so long as the appeal is pending.

[11] Weighing the competing considerations, I granted the r. 15.01(2) motion. It is in the interests of justice and the parties to have the appeal hearing proceed as scheduled. The materials filed by Stayside's former counsel, and Mr. Guilbault's undertaking to rely on them and to seek legal advice as needed, minimize any burden on the court.

The respondents' motion for security for costs

[12] The respondents seek security for costs totaling $60,000. This amount represents the costs awarded to the respondents on the summary judgment motion ($50,000) as well as the costs they expect to seek if they prevail on the appeal ($10,000).

[13] The respondents contend that security for costs ought to be ordered under:

a) under r. 61.06(1)(a), because "it appears that there is good reason to believe that the appeal is frivolous and vexatious and that the appellant has insufficient assets in Ontario to pay the costs of the appeal";

b) under r. 61.01(1)(b) and r. 56.01(1)(c), because Stayside has not yet paid the costs order by the motion judge; and/or

c) under r. 61.01(1)(c), because Stayside's conduct and the passage of time amount to another "good reason" for the proposed order.

[14] An order under any of these provisions is discretionary. Even where a moving party can show that the specific criteria set out in each subrule are met, an order for security for costs will not be made unless the court is persuaded that it is just: *Thrive Capital Management Ltd. v. Noble 1324 Queen Inc.*, 2021 ONCA 474, 156 O.R. (3d) 551, at para. 31.

[15] The respondents have a good argument, in my view, for an order for security for costs under the criteria stated at rr. 61.01(1)(a) and 61.01(1)(b). I nevertheless find that it would be unjust, at this late date, to grant their motion.

[16] The respondents have known for some time that Stayside does not have the means to pay costs. Despite this, they did not bring this motion until May 30, 2024. A delay in moving for security for costs is a relevant factor under r. 61.06: *Heidari v. Naghshbandi*, 2020 ONCA 757, 153 O.R. (3d) 756, at para. 6, citing *Yaiguaje v. Chevron Corporation*, 2017 ONCA 827, 138 O.R. (3d) 1, at para. 24; *Foodinvest Limited v. Royal Bank of Canada*, 2020 ONCA 387, at para. 15.

[17] The respondents' counsel advised that they did not move for security for costs earlier because they were unsure whether Stayside would proceed with the appeal.

[18] This is a credible argument, up to a point. Stayside did not perfect its appeal until March 7, 2024, after the parties consented to an extension of the deadline to do so on three separate occasions. This does not, however, explain why the respondents waited almost another three months before bringing this motion. And, although they are not responsible for its adjournment from July 24 to August 19, the practical result is that the motion is being brought at the eleventh hour.

[19] At this stage, the bulk of the costs associated with the appeal have already been incurred. All written materials on the appeal have already been filed. The only remaining step is the oral hearing in just over three weeks. As a result, ordering Stayside to post security for costs would not reduce the respondents' exposure to costs in any meaningful way. Its only potential effect would be to deprive Stayside of its day in court.

[20] In these circumstances, I decline to order the appellant to post security for costs.

"S. Gomery J.A."