COURT OF APPEAL FOR ONTARIO

CITATION: GlycoBioSciences Inc. (Glyco) v. MAGNA Pharmaceuticals, Inc. (Magna), 2024 ONCA 760
DATE: 20241015
DOCKET: M55197 (COA-24-CV-0417) & M55199 (COA-24-CV-0270)

Simmons, Coroza and Sossin JJ.A.

DOCKET: M55197 (COA-24-CV-0417)

BETWEEN

GlycoBioSciences Inc. (“Glyco”)

Applicant
(Appellant/Moving Party)

and

MAGNA Pharmaceuticals, Inc. (“Magna”)

Respondent
(Respondent/Responding Party)

DOCKET: M55199 (COA-24-CV-0270)

AND BETWEEN

GlycoBioSciences Inc. (“Glyco”)

Applicant
(Appellant/Moving Party)

and

Industria Farmaceutica Andromaco, SA., de C.V. (“Andromaco”)* and Montebello Packaging (“Montebello”) and Nadro S.A.P.I. de C.V. (“Nadro”)

Respondents
(Respondent*/Responding Party*)

Kevin Drizen, acting in person for the moving party

Andrew Moeser and Dan Malone, for the responding parties, MAGNA Pharmaceuticals Inc. and Industria Farmaceutica Andromaco, S.A., de C.V.

Heard: October 8, 2024

REASONS FOR DECISION

BACKGROUND

[1] This panel review under s. 7(5) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, arises out of a single-judge motion decision denying leave, pursuant to r. 15.01(2) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, to the corporate appellant, GlycoBioSciences Inc. ("Glyco"), to be represented by Mr. Drizen, who is not a lawyer but serves as the President of Glyco, as well as being a director and shareholder of the corporation.

[2] After the review hearing, we dismissed the motion for reasons to follow. These are our reasons.

[3] The underlying disputes between Glyco and the responding parties relate to contracts for the manufacture and distribution of a "Wound Gel" product. Each contract contains either an arbitration or forum selection clause, none in favour of Ontario. Both underlying appeals involve proceedings initiated by Glyco that were dismissed for lack of jurisdiction. On both appeals, leave is sought under r. 15.01(2) for Mr. Drizen to represent Glyco as a non-lawyer.

[4] The motion judge identified that granting leave to a non-lawyer to represent a corporation under r. 15.01(2) is discretionary and "must be made having regard to all of the circumstances in a particular case." While not reviewing the Ontario Superior Court case law on the application of this rule in detail, the motion judge acknowledged the risk discussed in *Leisure Farm Construction Limited v. Dalew Farms Inc. et al.*, 2021 ONSC 105, in permitting non-lawyers to represent corporations. Per *Leisure Farm*, non-lawyers are not bound by the *Rules of Professional Conduct* as lawyers are, nor are they subject to the personal financial consequences associated with cost orders that self-represented litigants face: at paras. 12-15. Nonetheless, the motion judge recognized that these risks, together with other considerations that could weigh against granting leave must be balanced with any concerns that arise about access to justice.

[5] The motion judge declined to exercise his discretion to grant leave to Mr. Drizen to represent Glyco on several grounds. First, the motion judge concluded that due to his uncertainty of Glyco's financial position, he did not accept Mr. Drizen's argument that his representation was necessary to ensure access to justice for the corporation. Second, the motion judge stated his concerns with Mr. Drizen's conduct in the procedural steps taken in this litigation and noted past judicial criticisms of Mr. Drizen's conduct in similar litigation. The motion judge concluded, "[i]n summary, Mr. Drizen has not met his burden of establishing that he should be permitted to represent the corporation."

PRELIMINARY ISSUES

[6] The responding parties raised a preliminary objection to Mr. Drizen arguing the motion on behalf of Glyco. The responding parties submit that this was improper, as the motion decision was not subject to any stay and required Glyco to retain licensed counsel. According to the responding parties, Glyco's refusal to comply with this court's orders warrants dismissal of this motion.

[7] We disagree. In our view, Mr. Drizen was not precluded from arguing the motion seeking to set aside the decision that denied leave for him to represent Glyco.

[8] There is another preliminary issue with respect to the admission of fresh evidence in the form of financial information relating to Glyco. Mr. Drizen sought to file this allegedly confidential financial information in response to the responding parties' motions for security for costs rather than in support of the Rule 15 motions. As the motion judge decided the Rule 15 motion had to be addressed prior to any motion for security for costs, this aspect of the record appeared not to be before the motion judge.

[9] This material, including several years of statements from Glyco's CIBC account, has been filed as part of the motion record on this panel review. Mr. Drizen stated in his oral submissions that he was relying on the motion judge's failure to consider this evidence as a basis for setting aside the motion decision.

[10] The motion judge stated, “I am left in some doubt as to the nature of this corporation and its financial affairs.”

[11] While the motion judge decided the Rule 15 motions would be addressed prior to the security for costs motion, it is unclear whether the motion judge reviewed the record underlying the security for costs motion. In these circumstances, Mr. Drizen was permitted to make submissions on the basis of this evidence without first being required to bring a motion to have this evidence admitted as fresh evidence.

ANALYSIS

[12] We now turn to the motion decision itself.

[13] A panel review of a motion judge’s decision under s. 7(5) of the *Courts of Justice Act* is not a *de novo* determination: *Correct Building Corporation v. Lehman*, 2022 ONCA 723, at para. 3; *Machado v. Ontario Hockey Association*, 2019 ONCA 210, at para. 9. Deference is owed to the discretionary decisions of a motion judge. A reviewing panel may only intervene if the motion judge erred in principle or reached an unreasonable result, or if the motion judge’s decision reflects a legal error or a misapprehension of material evidence: *Hillmount Capital Inc. v. Pizale*, 2021 ONCA 364, 462 D.L.R. (4th) 228, at para. 18.

[14] In this case, we see no error of principle, unreasonable result, or legal error. The motion judge properly recognized the discretionary and contextual nature of

r. 15.01(2) and provided a clear justification for his decision to deny leave for Mr. Drizen to represent Glyco in these appeals.

[15] Mr. Drizen argues that the financial information first filed in response to the responding parties' security for costs motion supports his claim that Glyco is impecunious. Mr. Drizen asserts that the motion judge did not consider this evidence, leading him to err in his conclusion that "[t]his is not a case in which access to justice supports the granting of his motion."

[16] The responding parties contend that the motion judge's conclusion on access to justice was justified irrespective of Glyco's financial position, given the context of this litigation, in which Glyco is seeking Ontario courts to assert jurisdiction over claims against foreign corporations that do not conduct business in Ontario.

[17] The motion judge correctly stated in his reasons that Mr. Drizen bore the burden of showing leave was justified, including with respect to Glyco's financial position. Whether or not he referred to the bank records of Glyco in reaching this conclusion is immaterial, as those records do not establish the financial position of Glyco, or address the status of its previous revenues or its current business model. It was open to the motion judge to conclude that access to justice did not support granting the motion.

[18] Additionally, the motion judge relied on the conduct of Mr. Drizen in this litigation and similar claims. He referred to Mr. Drizen's "problematic" procedural steps in this litigation, and cited decisions in which Mr. Drizen's conduct led to the imposition of substantial indemnity costs: see e.g., *GlycoBioSciences Inc. v. Herrero and Associates*, 2023 ONCA 331. In our view, this was a relevant factor in denying leave.

[19] In sum, we see no error in the motion judge's exercise of discretion to deny the motion before him on this basis.

DISPOSITION

[20] For these reasons, we dismiss the motion.

[21] The responding parties sought an order that Glyco be given 30 days to appoint a solicitor of record, failing which, the pending appeals should be administratively dismissed. This order was granted, with time running from October 8, 2024, the date of the decision. We would reiterate, if necessary, that no further order is required for the enforcement of this decision beyond the endorsement provided at the close of the hearing and that the moving party's approval of that order was dispensed with.

COSTS

[22] The responding parties are also entitled to costs.

[23] The responding parties seek costs on a substantial indemnity basis of $7,375.28 on behalf of each responding party. In the alternative, they seek partial indemnity costs of $4,916.86 on behalf of each responding party. The responding parties also request that these costs be imposed personally against Mr. Drizen.

[24] In our view, personal costs against Mr. Drizen are not warranted in these circumstances.

[25] The appellant shall pay partial indemnity costs in the amount of $4,916.86 all-inclusive to each responding party.

"Janet Simmons J.A."
"S. Coroza J.A."
"L. Sossin J.A."