COURT OF APPEAL FOR ONTARIO

CITATION: Hogg v. Wealthsimple Inc., 2024 ONCA 749
DATE: 20241011
DOCKET: COA-23-CV-1283

Huscroft, Harvison Young and Copeland JJ.A.

BETWEEN

Charles Leigh Hogg

Plaintiff (Appellant)

and

Wealthsimple Inc., Wealthsimple Advisor Services Inc. and Wealthsimple Technologies Inc.

Defendants (Respondents)

Sean Dewart and Mathieu Bélanger, for the appellant

Kenneth Dekker and Ardita Sinojmeri, for the respondents

Heard: October 3, 2024

On appeal from the order of Justice Peter J. Osborne of the Superior Court of Justice, dated November 2, 2023.

REASONS FOR DECISION

[1] This is an appeal from the order of the motion judge setting aside an *ex parte* order that extended time for service of the appellant's statement of claim. The motion judge found that the appellant failed to make the full and fair disclosure that was required on an *ex parte* motion. The motion judge also dismissed the

appellant's cross-motion to validate or extend time for service retroactively because of prejudice to the respondents caused by the appellant's delay.

[2] The appellant argues that the motion judge made a palpable and overriding error in finding that the appellant was aware that the Mutual Fund Dealers Association (the "MFDA") was investigating one of the respondents when he brought his *ex parte* motion. We do not agree. It was open to the motion judge to infer that the appellant was aware of the MFDA's investigation into the respondent's conduct alongside its investigation into his own conduct arising out of the same facts. The motion judge's finding reveals no error and is entitled to deference.

[3] Second, the appellant argues that the motion judge failed to balance the prejudice to each of the parties. Again, we do not agree. It was open to the motion judge to conclude that prejudice arose from the respondent's entry into the MFDA settlement, in that doing so materially impaired its ability to defend the appellant's action. He recognized the desirability of having matters determined on the merits but found that the balance weighed in favour of the respondents. This was a discretionary decision that is entitled to deference. There is no basis for this court to intervene.

[4] The appeal is dismissed. The respondent is entitled to costs in the agreed amount of $10,000, all inclusive.

"Grant Huscroft J.A."
"A. Harvison Young J.A."
"J. Copeland J.A."