

**CITATION:** Lawyers' Professional Indemnity Company v Sochnyeva 2024 ONSC 6202  
**COURT FILE NO.:** CV-19-620913  
**MOTION HEARD:** 20241022

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Lawyers' Professional Indemnity Company, Plaintiff

**AND:**

Hanna Sochnyeva and Dmytro Sochnyev, Defendants

**BEFORE:** Associate Justice Jolley

**COUNSEL:** Matthew Bradley, counsel for the moving party plaintiff

Hanna Sochnyeva, self-represented defendants

**HEARD:** 22 October 2024

**REASONS FOR DECISION**

**A. Overview**

- [1] The plaintiff's motion for an order striking the defendants' statement of defence for failure to comply with multiple court orders came before me on 4 December 2023. The defendants did not appear and I granted the plaintiff's motion.
- [2] The defendants appealed on the basis that they tried but could not obtain the information needed to join the virtual hearing on December 4. Specifically without making any comments on the merits of the order, the Divisional Court granted the defendants' request that the order be set aside so that they could participate. Although the defendants were successful on their appeal, they appealed that decision to the Court of Appeal. The appeal was dismissed on 18 October 2024 and the defendants ordered to pay \$2,500 in costs.
- [3] The motion came back before me on 22 October 2024. The defendants filed responding affidavits sworn 24 February 2024, 28 March 2024, 28 September 2024 and 16 October 2024 and attended virtually to participate in the hearing and I heard the motion afresh.

**B. Preliminary Issues**

**(a) An interpreter**

- [4] Shortly before the commencement of the hearing, Ms. Sochnyeva emailed the court to request a Ukrainian interpreter for the morning's hearing. I advised, through the court office, that the request was too late and, further, that it was the responsibility of the parties themselves to arrange for an interpreter other than English or French. Further, Ms.

Sochnyeva had prepared multiple court materials over the years in clear English. In the course of her submissions, Ms. Sochnyeva confirmed that she was now not seeking an adjournment on the basis of the need for an interpreter but on the basis that the order of Associate Justice Brott appointing me as case management associate judge was still under appeal.

**(b) The appeal of my appointment as case management associate judge**

- [5] On 7 February 2023, team lead Associate Justice Brott assigned the matter to me for case management. On 27 March 2023 Ms. Sochnyeva requested an adjournment of a timetabling case management call before me on the basis that she had appealed the case management order. I advised her then, as I do now, that her appeal of that case management order did not stay the order and she should participate in her own interest. She chose not to participate in the case conference and I made timetable order.
- [6] The defendants argue that I do not have jurisdiction to hear this motion while the order appointing me as case management associate judge is under appeal. I do not accept their argument. The logical extension of the defendants' argument would mean that my appointment as case management associate judge would give me less authority to hear this motion than my fellow associate judges have. It matters not whether I hear this motion as the case management associate judge or as an associate judge. In either capacity, I have jurisdiction to hear this motion.
- [7] The rules provide that the court (a defined term that includes an associate judge) may strike a defendant's defence if the defendant fails to comply with a timetable, attend examinations for discovery, pay costs of a motion or comply with an interlocutory order. I find there is no reason I cannot hear this motion, regardless of my case management status.
- [8] On that basis, I declined the defendants' request that this motion be adjourned until after the appeal of the case management order is heard, as well as for the reasons Koehnen, J. gave when Ms. Sochnyeva raised this same issue before him on 8 October 2024 in a further attempt to postpone this motion. He noted: "A party is entitled to move to strike a pleading regardless of whether there is a case management Associate Justice or not. Even if the order of A.J. Brott were stayed, it would not preclude the bringing of a motion to strike."

**(c) The defendants' own motion to dismiss the plaintiff's claim**

- [9] I then dealt with the defendants' attempt to have their motion to dismiss the plaintiff's claim heard before this motion was argued. The defendants' motion seeks a dismissal of the action on the basis that the plaintiff has allegedly failed to respond to their request to inspect documents. The motion was not booked and was not on my list, although the defendants did serve the plaintiff and did upload their motion record. Ms. Sochnyeva advised me both that she was not allowed to submit any documents through the portal for filing and also that she was told she did not need to book a separate motion as the plaintiff's motion was already on the list. I do not accept that explanation as, without booking their separate motion, there is no time available to argue it.

[10] As it was, I granted Ms. Sochnyeva time to argue the defendants' motion and she was satisfied that it was heard. After hearing submissions, I find that the motion was not properly before me. It was served late and was not booked with the court. Had the motion been properly before me, I would have dismissed it in any event. The documents sought pursuant to the request to inspect are not referenced in the statement of claim, an affidavit or the affidavit of documents. Other documents listed in the request to inspect, such as proof of service and copies of filed affidavits, are filed with the court and publicly available.

**(d) The defendants' notice of constitutional question**

[11] The defendants next noted that they had uploaded a notice of constitutional question and had served it on the Attorneys General for Canada and Ontario on 14 October 2024. They argued that the notice needed to be adjudicated before this motion could be heard. The notice was not attached to any application for relief before me or supported by any evidentiary record, so I did not deal with it.

[12] I dismissed the defendants' adjournment request for the reasons set out above and proceeded to hear argument on the substantive issues.

**C. Substantive Argument**

[13] The plaintiff seeks an order striking the defendants' statement of defence as a result of their alleged breach of multiple court orders, their failure to attend examinations for discovery and their failure to pay multiple cost orders. The plaintiff advises that the defendants have not cured any of the defaults, despite the passage of more than a year since I first heard this motion. In fact, they are now in default of further court orders, particularly the payment of new costs awards. Nor have they attended examinations for discovery.

[14] The defendants argue that they are not in default as they complied with one order of Chalmers, J. and have appealed all the other orders. They argue that they did not attend the court ordered discoveries because the plaintiff did not provide the documents in the request to inspect and because the case management order was still under appeal.

[15] This matter has been before the courts on numerous occasions. On 5 October 2021, Chalmers, J. ordered the parties to deliver their affidavits of documents by 31 December 2021, and to complete examinations for discovery by 30 April 2022. The plaintiff delivered its affidavit of documents but the defendants did not. They sought an extension of time to seek leave to appeal this order, without notifying the plaintiff. The request for an extension was refused.

[16] The matter then came before Stinson, J. on 26 October 2022 for a new timetable, given the one ordered by Chalmers, J. had lapsed. He ordered that the defendant Sochnyev serve his affidavit of documents by 31 October 2022 and that examinations for discovery be completed by 30 March 2023. The defendants did not comply with this order.

- [17] Instead, they sought leave to appeal the order of Stinson, J. Leave to appeal was dismissed by the Divisional Court on 2 June 2023 and the defendants were ordered to pay costs of \$2,500. The defendants sought leave from the Court of Appeal to appeal that order and sought leave to file a longer factum and leave to adduce fresh evidence. On 15 August 2024 the Court of Appeal dismissed the factum extension motion along with a motion to stay and ordered the defendants to pay \$4,000 in costs. The defendants have sought a motion to have a panel of the Court of Appeal review that order. This request does not stay the order. The defendants have not paid those costs or the costs ordered by the Divisional Court. The timetable was not complied with and is long out of date.
- [18] On 27 March 2023 I ordered the defendants to attend discoveries on June 20, 21 and 22 on a peremptory basis. They did not do so. Although I had already advised them that their appeal did not stay the case management order, they refused to attend discoveries on the basis that the proceeding was stayed until their appeals of the orders of Stinson, J. and Brott, A.J. were determined.
- [19] The defendants then appealed my timetable order. Chalmers, J. dismissed the appeal on 4 April 2024 and ordered the defendants to pay costs of \$500. They filed a motion for leave to appeal but leave has not been granted. As such, the order is effective and the defendants have not complied by attending discoveries. Nor have they paid the costs.
- [20] I find the defendants have failed to comply with multiple court orders. Despite this action have been commenced five years ago, the plaintiff has been unable to even examine the defendants for discovery.
- [21] There are eight outstanding costs orders against Ms. Sochnyeva in the underlying action (*Sochnyeva ats Mitchell, Bardyn & Zalucky*) totalling \$23,416.12. Some of those orders date back more than a decade, so considerable interest has accrued as well. All appeal rights have expired and these costs are due and payable. There are five unpaid costs orders against the defendants in this action, which total \$10,500. Costs orders lose their effectiveness when they are simply ignored.
- [22] Failure to comply with a court order, or even multiple orders, may not be sufficient reason to support an order striking a defence in every case but, as noted by Dunphy, J in *Rana v Unifund Assurance Co.* 2016 ONSC 2502, the court “must be alive to the possibility that non-compliance with court orders is indicative of its process being abused.” I find that is the case here.
- [23] The plaintiff advises that since 2021 this action has been before eleven Superior Court judges, some multiple times, three associate judges, some multiple times, eight Divisional Court attendances and two Court of Appeal judges. This does not include the defendants’ attempt in December 2023 to ask the Federal court to become involved in a review of all the Superior Court orders, something it declined to do.
- [24] There have been multiple timetable orders set, and the defendants have complied with none of them. Despite being advised that their appeal of the case management order did not stay

the peremptory examination for discovery order, they took a contrary view and refused to attend. It is apparent that they will not comply with orders with which they disagree, which I find to be indicative of the court process being abused.

- [25] This conclusion is bolstered by the fact that the defendants have appealed virtually every order made in this action. They have appealed the dismissal of their appeals. They have even attempted to appeal their successful appeal before Matheson, J. They have brought motions and sought stays at the eleventh hour, which all appear to be for the sole purpose of derailing whatever motion is before the court and ensuring that it not be heard on its merits. None has succeeded but the defendants continue undeterred. What their conduct has done has bought them time, and lots of it.
- [26] In light of the defendants' conduct, I find that setting another timetable order would be ineffective. There have already been many timetable orders already made and the defendants have not complied. Ms. Sochnyeva did deliver her affidavit of documents, but well outside the 31 December 2021 deadline set in the order of Chalmers, J. It is unlikely the defendants would comply with a new timetable and would likely just continue to appeal and delay. There was sufficient reason to strike their defences in December 2023. That rationale is even stronger now, as the defendants have still not attended discoveries and have incurred, and left unpaid, additional costs orders since that time.
- [27] The plaintiff's motion to strike the defendants' defence is granted.

#### **D. Costs**

- [28] The plaintiff seeks partial indemnity costs of \$8,974.69 for its motion to strike the statements of defence and partial indemnity costs of \$1,366.85 to prepare a responding record and factum to address the defendants' motion to dismiss the plaintiff's claim.
- [29] Considering all the circumstances of this motion, including the breadth of the materials filed and the plaintiff's success, I find these sums to be a fair and reasonable amount for the defendants to have expected to pay in the event they were unsuccessful on the motions. The defendants shall jointly and severally pay the plaintiff the sum of \$10,341.54 forthwith.
- [30] Order to go in terms of the draft order attached, which I have signed.

---

Associate Justice Jolley

Date: 7 November 2024