

CITATION: Lawyers' Professional Indemnity Company v. Sochnyeva, 2024 ONSC 7081
COURT FILE NO.: CV-19-620913
DATE: 20241217

ONTARIO SUPERIOR COURT OF JUSTICE

RE: Lawyers' Professional Indemnity Company, Plaintiff

-and-

Hanna Sochnyeva and Dmytro Sochnyev, Defendants

BEFORE: Robert Centa J.

COUNSEL: Matthew Bradley, for the plaintiff

Hanna Sochnyeva and Dmytro Sochnyev, self-represented litigants

HEARD: December 16, 2024

ENDORSEMENT

[1] On February 7, 2023, Associate Justice Ronna M. Brott, Team Lead-Associate Judges, Toronto Region, assigned this action to Associate Justice Jolley for case management. The defendants have appealed this decision.

[2] The appeal is dismissed. Associate Justice Brott, in her capacity as Team Lead, had the jurisdiction to assign this action to an associate justice. I would not interfere with her discretionary decision to do so. Indeed, this action cries out for case management.

A. *Background and decision under appeal*

[3] I will not attempt to summarize all the steps in this litigation. There are too many and doing so would serve no useful purpose. I will set only the facts necessary to understand my decision to dismiss this appeal:

- a. In 2010, Ms. Sochnyeva unsuccessfully sued Seneca College over her grades and student loans. The Court of Appeal dismissed her appeal;
- b. In 2013, Ms. Sochnyeva sued the lawyers who represented her in the action against Seneca College. The Lawyers' Professional Indemnity Company (now LawPro) defended the lawyers under their policy of insurance. The court dismissed Ms. Sochnyeva's action because she had failed to pay seven interlocutory costs orders.
- c. The lawyer defendants obtained writs of seizure and sale arising from the unpaid costs orders and assigned them to LawPro. Ms. Sochnyeva has not complied with the costs orders, which remain unpaid today.

- d. In 2018, LawPro commenced this action asserting that Ms. Sochnyeva fraudulently conveyed her interest in real estate to her husband, Mr. Sochnyev, in order to defeat its interests.
- e. The defendants filed defences on August 13 and 14, 2018.

[4] The defendants delayed the delivery of their affidavits of documents. The defendants did not comply with court ordered timetables. The defendants did not attend examinations for discovery despite a court order making those dates preemptory on them.

[5] On November 2, 2022, the parties appeared before Sugunasiri J. at Civil Practice Court. Justice Sugunasiri, not surprisingly, recommended that the parties seek the assistance of an associate judge to case manage the action. LawPro emailed the defendants on November 23, December 1 and 14, 2022, and January 4 and 10, 2023, seeking the defendants' consent to refer the action to case management. The defendants did not respond.

[6] On December 14, 2022, LawPro emailed the associate justices' motion coordinator (with a copy to the defendants) as follows:

On November 2, 2022, the parties in this action appeared before Justice Sugunasiri for a CPC appearance. Justice Sugunasiri, correctly noting the history of the file, recommended that the parties seek the assistance an associate judge to case manage the matter.

I have tried several times to obtain the defendants' consent to having the matter case managed, but the defendants have refused to respond at all.

I am seeking to have an Associate Judge assigned to this matter so that it can be case managed and moved along. Please advise if there is any special requisition form you need me to complete, or any further information I may provide.

[7] On December 15, 2022, court staff responded that the defendants should complete the case management requisition form and send it to a particular email address. On January 10, 2023, LawPro emailed its completed form to the court, as directed. LawPro used the correct form, titled "Superior Court of Justice (Toronto Region) Request for Case Management." LawPro correctly indicated that its request was made on notice to the defendants. Since the defendants refused to respond to LawPro's request that they consent to the assignment to case management, LawPro correctly identified that the defendants opposed the request.

[8] LawPro provided detailed submissions in support of its request. LawPro described the nature of the case, a timeline of the last four years in the action, the eight court appearances since February 2020, and the three upcoming litigation steps that were required under existing court-ordered timetables. LawPro provided four reasons it was making the request that the action be assigned to case management and addressed the criteria for assigning cases to case management over ten paragraphs. In total, the submissions spanned two

single-spaced pages. The submission was detailed, thorough, and amply demonstrated why this action was well suited to case management.

- [9] The form then has a space with three check-boxes to be completed by the judge or associate judge to indicate the disposition of the motion. The three options were:
- a. Request is granted. Proceeding is assigned to case management under Rule 77. Associate justice is assigned to hear all motions in the proceeding within the jurisdiction of an associate judge and conduct case conferences if and as required. Case conferences may be arranged through the associate judge's assistant trial coordinator.
 - b. Request is refused.
 - c. This request requires a motion on notice to all parties.

- [10] On February 7, 2023, Associate Justice Ronna M. Brott, Team Lead – Associate Judges, Toronto reason, granted the request. She issued a signed and dated endorsement that read as follows:

This action is assigned by the Team Lead – Associate Judges to Associate Justice Jolley for case management. If a case conference is required, it may be arranged through the Associate Justice's Assistant Trial Co-ordinator who may be reached by email at...

- [11] Ms. Sochnyeva and Mr. Sochnyeva have appealed this order.

B. *Standard of review*

- [12] The normal appellate standards of review from *Housen v. Nikolaisen* apply on an appeal from a decision of an associate judge.¹ The standard of review on a question of law is correctness. The standard of review for findings of fact is palpable and overriding error, which is a much more deferential standard of review than correctness.
- [13] I may only interfere with the order of Associate Justice Brott if I am satisfied that she made an error of law, exercised her discretion on wrong principles, or misapprehended the evidence such that there is a palpable and overriding error.² I may not interfere with the order simply because I might have exercised my discretion differently.

C. *The appeal is dismissed*

- [14] For the reasons that follow, I dismiss the appeal.

¹ 2002 SCC 33, [2002] 2 S.C.R. 235; *Zeitoun v. Economical Insurance Group*, 2009 ONCA 415, 96 O.R. (3d) 639, at para. 1.

² *Zeitoun*, at paras. 40-41.

- [15] First, the defendants submit that Associate Justice Brott erred in law by assigning this matter to case management because actions brought under the simplified procedure in Rule 76 are exempt from case management under Rule 77 by virtue of rule 77.02(2)(g) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg 194.
- [16] LawPro, however, did not bring this action under the simplified procedure in Rule 76 and the exclusion in rule 77.02(g) does not apply to this action. The defendants are of the view that the action should have been brought under Rule 77, but that does not change the fact that LawPro did not commence this proceeding under Rule 76. While there may be costs consequences at the end of the day if LawPro should have commenced the proceeding under Rule 76, it chose not to do so.³ I do not accept the defendants' submission that Rule 76 makes this action ineligible for case management.
- [17] Second, the defendants submit that there have been extensive delays in the case. They rely on the Supreme Court of Canada's decision in *R. v. Jordan*, which has no application to a civil proceeding.⁴ Moreover, it is patently obvious that blame for the delay in this case lies with the defendants, not LawPro.
- [18] In my view, the Team Lead for the Associate Justices had the jurisdiction under Rule 77 and the applicable practice direction to assign this action to case management. There was no need for Associate Justice Brott to schedule a motion to determine whether to assign the action to case management. The civil justice system cannot tolerate the delay and unnecessary expenditure of resources arising from such motions absent clear need for them. Associate Justice Brott did not err in the exercise of her discretion to assign this action to case management without the formality of a motion. Given LawPro's detailed submissions, no motion was required to see that this action would benefit from case management.
- [19] The appeal is dismissed.

D. *Other issues raised in amended notice of motion*

- [20] On December 7, 2024, the defendants delivered and uploaded to Case Center an amended notice of motion raising a host of other issues including seeking:
1. An order setting aside any noting in default issued against the defendants, including:
 - a) The noting in default issued on December 5, 2023; or
 - b) Any subsequent renewal or issuance of noting in default following the rehearing decision on November 7, 2024.

³ Rule 76.13.

⁴ [2016] 1 S.C.R. 631

2. An order reinstating the defendant's defenses, which were struck by Associate Justice Jolley on November 7, 2024, to enable the defendant to proceed with the appeal of the case management assignment under Associate Justice Brott's order dated February 7, 2023, scheduled for hearing on this date.

3. A declaration that no further procedural actions or enforcement measures be taken against the Defendant or the innocent owner of the property, Dmytro Sochnyev.

4. A declaration that the renewal of costs against Dmytro Sochnyev by the plaintiff is invalid and unenforceable as it was made in breach of Rule 60.07(2), which requires leave of the court after six years from the date of the order.

5. Leave to deliver a statement of defense, as required.

[21] The defendants seek to expand the scope of this motion. LawPro did not have proper notice that the defendants would seek this relief and it would be unfair to consider these issues at this hearing.

[22] I dismiss the balance of the relief sought without prejudice to the defendants revisiting these issues on notice to the plaintiff and in the appropriate forum. I offer no comment on whether the defendants are entitled to seek any of the other relief sought. I am only deciding that those matters are not properly before the court today.

E. Costs

[23] As the successful party, LawPro is presumptively entitled to the costs of this appeal. LawPro seeks the costs of the appeal fixed in the amount of \$4,300.00 on a partial indemnity scale.

[24] Fixing costs is a discretionary decision under s. 131 of the *Courts of Justice Act*, R.S.O. 1990, c C.43. In exercising my discretion, I may consider the result in the proceeding, any offer to settle or to contribute made in writing, and the factors listed in rule 57.01. These factors include but are not limited to: (i) the result in the proceeding; (ii) the experience of the lawyer for the party entitled to the costs as well as the rates charged and the hours spent by that lawyer; (iii) the amount of costs that an unsuccessful party could reasonably expect to pay in relation to the step in the proceeding for which costs are being fixed; (iv) the amount claimed and the amount recovered in the proceeding; (v) the complexity of the proceeding; (vi) the importance of the issues; and (vii) the conduct of any party that tended to shorten or lengthen unnecessarily the duration of the proceeding. Rule 57.01(1)(f) provides that the court may also consider “any other matter relevant to the question of costs.”

[25] In exercising my discretion to fix costs, I must consider what is fair and reasonable for the unsuccessful party to pay in this proceeding and balance the compensation of the successful

party with the goal of fostering access to justice: *Boucher v Public Accountants Council (Ontario)* (2004), 71 O.R. (3d) 291 (C.A.) at paras. 26 and 37.

- [26] In my view, this is an appropriate case for costs on a partial indemnity basis. The amount claimed by LawPro, which was entirely successfully, is extremely reasonable. The rates charged and hours spent are both reasonable. I have no doubt that the defendants reasonably expected to face a claim for costs of at least this amount.
- [27] For these reasons, I fix the costs of the appeal at \$4,300.00, inclusive of disbursements and Harmonized Sales Tax, and order the defendants, jointly and severally, to pay that amount to the LawPro on or before January 17, 2025.

Robert Centa J.

Date: December 17, 2024