

COURT OF APPEAL FOR ONTARIO

CITATION: Kirpichova v. Galaxy Real Estate Core Ontario LP, 2024 ONCA 843

DATE: 20241115

DOCKET: M55519 (COA-24-OM-0327)

Roberts J.A. (Motions Judge)

BETWEEN

Marta Kirpichova* and Emad Elguindy*

Tenant (Moving Parties*)

and

Galaxy Real Estate Core Ontario LP

Landlord (Responding Party)

Marta Kirpichova and Emad Elguindy, acting in person

Rob L. Winterstein, for the responding party

Heard: November 13, 2024

ENDORSEMENT

[1] The tenant, Ms. Kirpichova, and her partner, Mr. Elguindy (who also resides in the rental unit) (“the moving parties”), seek a stay of the order of Sachs J., sitting as a single judge of the Divisional Court, dated October 25, 2024, until the disposition of their motion for leave to appeal Sachs J.’s order, and, if leave is granted, their appeal.

[2] Sachs J. dismissed the moving parties’ appeal of a Review Order of the Landlord and Tenant Board (“the Board”) that dismissed the tenant’s motion to void

the November 15, 2022 eviction order made by the Board (“the eviction order”). The eviction order terminated the tenancy for arrears of rent. Ms. Kirpichova’s appeal of the eviction order was dismissed by the Divisional Court on July 27, 2023. Sachs J. allowed the responding party’s cross-appeal. She remitted to the Board the determination of whether, in the interests of fairness, the monies paid by the tenant and held in trust by the Board in the amount of \$39,886.64 should be paid to the landlord. She awarded the responding party costs payable by Ms. Kirpichova in the amount of \$4,339.20.

[3] The responding party landlord opposes the stay. I was advised that the eviction is scheduled for the week of November 25, 2024.

[4] The test on a motion for a stay is the same as for an interlocutory injunction. The overarching consideration in determining whether a stay ought to be granted is whether the stay is in the interests of justice. Factors typically informing that consideration include: 1) Is there a serious issue to be decided? 2) Would compliance with the order under appeal cause irreparable harm? 3) What is the balance of convenience? See: *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311. A stay is an equitable remedy within the discretion of the court.

[5] The interests of justice do not warrant the granting of a stay.

[6] It is important to consider the moving parties' stay motion in the overall context of the proceedings. The moving parties' stay motion is the latest in a myriad of unsuccessful proceedings starting in 2022 when the responding party obtained the eviction order from the Board. The tenant had stopped paying rent in November 2020 and began to accumulate the significant rent arrears of about \$54,000 to date, and that continued to accumulate at about \$1,750 per month.

[7] The litigation history is set out in Sachs J.'s reasons and need not be repeated here in detail. This history includes multiple appearances before the Board, the Divisional Court and this court. It demonstrates the moving parties' clear refusal to accept previous final determinations of the rental arrears and the eviction order that they seek to relitigate, and their clear determination to avoid making any payment to the responding party and to delay their eviction from the rental unit. Their refusal to accept previous court orders includes the failure to pay for October 2024 the monies ordered on June 13, 2024 to be paid at the beginning of each month by Myers J., sitting as a single judge of the Divisional Court, as a condition of the stay of the eviction order on the second appeal, and several final costs orders of the Divisional Court and this court which total several thousand dollars.

[8] There is no serious issue to be tried. The motion for leave to appeal Sachs J.'s order is without merit and does not meet the criteria for leave. The test for leave, especially in the case of a second appeal, is stringent and well-

established. Appeals to the Divisional Court are meant to be final and leave to appeal from the Divisional Court to this court will usually be granted only if there is an arguable issue involving a matter of statutory interpretation or of principles of law, special circumstances, clear error, or matters of public importance: *Sault Dock Co. v. Sault Ste Marie*, [1973] 2 O.R. 479; *Enbridge Gas Distribution Inc. v. Froese*, 2013 ONCA 131, at paras. 19-22; *Windrift Adventures Inc. v. Ontario (Animal Care Review Board)*, 2024 ONCA 89, at paras. 5 and 7.

[9] While the moving parties have raised an issue of statutory interpretation, it has no merit. The moving parties have not raised any arguable issue that brings into question the correctness of Sachs J.'s interpretation that the six-month enforcement period of the eviction order under s. 81 of the *Residential Tenancies Act*, 2006, S.O. 2006, c. 17, is stayed by Ms. Kirpichova's appeal, pursuant to s. 25(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S. 22. Other proposed grounds of appeal include issues of fact that were not before Sachs J., such as calculation errors in the rent arrears and amounts paid by the tenant, that do not meet the test for leave. In sum, the moving parties have not raised an arguable issue that transcends the dispute between the parties. They merely seek to relitigate the same issues of the rental arrears and the eviction order that have already been determined, repeating their unsuccessful argument that they owe nothing to the responding party.

[10] The moving parties have not shown that they will suffer irreparable harm. While they claim impecuniosity, they seem to have access to funds when needed. For example, they were able to make payments of monthly rent and towards the arrears of rent when ordered to do so by the Divisional Court in 2022 and 2024 as a condition of a stay of the eviction order pending the tenant's appeals; and they offered on this motion to pay \$1,750 in monthly rent in trust to the Board as a condition of the requested stay.

[11] I am not persuaded that they cannot afford to rent another place to live, temporarily or permanently, or that they have taken any steps to make alternate living arrangements, or that they will end up "on the street" as they submit. They have been aware of the eviction order for some time. Nor am I persuaded by the evidence submitted that Mr. Elguindy has health issues that will prevent him from leaving the moving parties' present apartment and moving to a new residence. He had no difficulty preparing voluminous materials and making fulsome and lengthy submissions on the motion on behalf of the moving parties.

[12] The balance of convenience clearly favours the responding party. According to the Board and court decisions that have not been appealed or reviewed successfully, there are significant arrears of rent. The tenant has stopped making payments towards the rent arrears and is not paying anything as monthly rent. Nor have the cost orders of the Divisional Court and this court been satisfied, which do not form part of their motion for leave to appeal. They refuse to vacate the unit and

thus prevent the responding party from mitigating its losses. Based on the history of these proceedings, it will likely be extremely difficult for the responding party to collect all of the monies owing.

[13] For these reasons, the motion for a stay is dismissed. The responding party is entitled to its costs of this motion from the moving parties in the all-inclusive amount of \$4,952.79.

“L.B. Roberts J.A.”