

COURT OF APPEAL FOR ONTARIO

CITATION: Perley-Robertson, Hill & McDougall LLP v. Eureka 93 Inc., 2024
ONCA 872
DATE: 20241202
DOCKET: COA-24-CV-0443

MacPherson, Roberts and Wilson JJ.A.

BETWEEN

Perley-Robertson, Hill & McDougall LLP

Creditor/Moving Party (Respondent)

and

Eureka 93 Inc. and Acenzia Inc.*

Debtors/Responding Parties (Appellant*)

Richard Hammond, for the appellants, Acenzia Inc. and Grant Bourdeau

Andrew J.F. Lenz, for the respondent

Heard: November 28, 2024

On appeal from the order of Justice Robert J. Smith of the Superior Court of Justice, dated April 11, 2024, with reasons reported at 2024 ONSC 1705.

REASONS FOR DECISION

[1] This appeal arises out of assessment proceedings commenced by Perley-Robertson, Hill & McDougall LLP against Acenzia Inc. and Grant Bourdeau, a director and officer of Acenzia, for payment of outstanding accounts. At the

conclusion of the parties' submissions, we advised them that the appeal was dismissed with reasons to follow. These are our reasons.

[2] Acenzia and Mr. Bourdeau appeal the April 11, 2024 order of Robert Smith J. who determined that Mr. Bourdeau was in contempt of the September 12, 2023 order of Marc Smith J.

[3] Marc Smith J. had ordered that: 1) Mr. Bourdeau produce the documents and information set out in the notice of examination in aid of execution 10 days before the examination in aid of execution; 2) Mr. Bourdeau attend for an examination in aid of execution which was to be held on a mutually convenient date no later than December 1, 2023; and 3) Mr. Bourdeau pay the respondent its costs of the motion in the amount of \$6,500. Neither Acenzia nor Mr. Bourdeau appealed or sought to stay the first motion judge's order.

[4] Although Mr. Bourdeau paid the costs order made by Marc Smith J., he failed to produce any of the documents or information ordered produced before he attended the examination in execution on the agreed upon date of November 7, 2023. When he attended the examination, he refused to answer any questions related to the examination in aid of execution on the advice of his counsel.

[5] Robert Smith J. found Mr. Bourdeau to be in contempt of Marc Smith J.'s order. He ordered that Mr. Bourdeau purge his contempt by attending an

examination in aid of execution within 60 days of his order, failing which Mr. Bourdeau would be committed to custody for 30 days. He further ordered that Mr. Bourdeau pay Perley-Robertson its costs of the second motion on a substantial indemnity scale in the amount of \$8,872.55.

[6] Acenzia and Mr. Bourdeau argue that there was no factual basis for the finding of contempt nor was such a finding necessary. They urge that it would not be in the interests of justice to enforce the assessment order and require Mr. Bourdeau to attend an examination in aid of execution in the face of ongoing litigation in separate proceedings, including a motion scheduled for next year to stay the consent assessment order underlying the order that Mr. Bourdeau produce documents and attend the examination in aid of execution.

[7] We see no error in Robert Smith J.'s order. He referenced and applied the governing principles for civil contempt articulated by the Supreme Court of Canada in *Carey v. Laitken*, 2015 SCC 17, [2015] 2 S.C.R. 79, at paras. 33-35. Applying those principles, the elements of civil contempt were clearly made out beyond a reasonable doubt: 1) the terms of the first motion judge's order were clear; 2) Mr. Bourdeau had actual knowledge of those terms; and 3) Mr. Bourdeau intentionally chose, on the advice of counsel, not to comply with them because of alleged potential prejudice to his and Acenzia's position in other proceedings. As the Supreme Court noted in *Carey*, at para. 44, "reliance on legal advice does not shield a party from a finding of contempt."

[8] It is beyond well-established that court orders must be followed unless they are stayed or overturned. If they were concerned about prejudice in other proceedings, Acenzia and Mr. Bourdeau should have appealed or sought to stay Marc Smith J.'s order. They did not do so. Nor did they move to stay Robert Smith J.'s order before this court. There was and remains no excuse for Mr. Bourdeau's ongoing failure to comply with a clear court order.

[9] For these reasons, we dismissed the appeal.

[10] After dismissing the appeal, we gave the parties the opportunity to agree on remedy. The parties agreed on the following order:

1. The contemnor, Grant Bourdeau, shall produce all of the documents referred to in Appendix "A" of the September 12, 2023 order of Marc Smith J. before January 9, 2025.
2. Mr. Bourdeau shall attend at the office of Perley-Robertson Hill & McDougall LLP in Ottawa on January 22, 2025, at 10:00 a.m., and shall answer any and all proper questions.
3. Acenzia and/or Grant Bourdeau shall forthwith pay costs of the appeal to Perley-Robertson in the amount of \$16,000.
4. Acenzia and/or Grant Bourdeau shall forthwith pay the costs ordered by the April 11, 2024 order of Robert Smith J.

[11] At the request of the parties, Roberts J.A. shall remain seized of this matter as case management judge for the purpose of dealing with any issues related to the enforcement of this court's order. For this purpose, if required, the parties or either party, with notice to the other, may seek through the Registrar an attendance before Roberts J.A.

[12] While the parties are to be commended for agreeing on remedy and are confident that there will be no further issues with Mr. Bourdeau's compliance, it is important that he understands that he has been granted a significant indulgence in being allowed one last opportunity to purge his contempt.

[13] Order to go accordingly.

"J.C. MacPherson J.A."
"L.B. Roberts J.A."
"D.A. Wilson J.A."