

CITATION: HSBC Bank Canada v. Turbo Logistics Canada Inc., 2011 ONCA 234
DATE: 20110325
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COURT OF APPEAL FOR ONTARIO

Armstrong, Juriensz and Watt JJ.A.

BETWEEN

HSBC Bank Canada

Applicant
(Applicant Respondent on Appeal)

and

Turbo Logistics Canada Inc.
and 2163960 Ontario Inc.

Respondents

Micheal Simaan, for the appellants Vladimir Botvinnik and 2086611 Ontario Inc.

Brian Casey and Michael Nowina, for the respondents

Heard & released orally: March 21, 2011

On appeal from the judgment of Justice David G. Stinson of the Superior Court of Justice, dated August 28, 2009.

ENDORSEMENT

[1] The appellants appeal the order of Stinson J., dated August 28, 2009, finding them in contempt of the receivership order made by Cumming J. on January 28, 2009.

[2] We do not accept the submission that the motion judge erred by declining to draw an adverse inference against the receiver for its failure to call the two independent witnesses who were present when the lock on Gate 2 was discussed. Counsel for the appellant asked the motion judge to draw the inference and he declined to do so. Drawing such an inference was not mandatory but was within the discretion of the motion judge.

[3] The appellants' second submission advances much the same argument in a different form. We do not agree that the motion judge's failure to draw the adverse inference amounted to a reversal of the burden of proof. It seems to us that the appellants are seeking to overturn the motion judge's findings of fact and credibility in the absence of any palpable and overriding error.

[4] The appeal is dismissed. The respondent shall have its costs of the appeal fixed at \$10,000 inclusive of disbursements and applicable taxes.

“R.P. Armstrong J.A.”

“R.G. Juriansz J.A.”

“David Watt J.A.”