

CITATION: Pezzolesi v. Skeggs, 2011 ONCA 253
DATE: 20110401
DOCKET: C52929

COURT OF APPEAL FOR ONTARIO

Sharpe, Gillese, Karakatsanis JJ.A.

BETWEEN

Lorenzo Pezzolesi

Plaintiff (Appellant)

and

Frederick J. Skeggs

Defendant (Respondent)

Jonathan L. Rosenstein, for the plaintiff/appellant

John Paul Paciocco, for the defendant/respondent

Heard & released orally: March 25, 2011

On appeal from the order of Justice J.A.S. Wilcox of the Superior Court of Justice dated October 13, 2010.

ENDORSEMENT

[1] The motion to admit fresh evidence is dismissed. Clearly everything in the appellant's affidavit tendered as fresh evidence was available at the time the motion was heard. It is tendered on the basis that the appellant was denied a fair opportunity to present his case as a self-represented litigant. We are unable to accept that proposition.

The appellant was represented by counsel until one week before the motion which had been served more than nine months earlier. He had filed an affidavit responding to the motion. In view of the language, style and tone of that affidavit and the fact that it was sworn by the appellant's solicitor, we find it difficult to accept the appellant's assertion that he drafted the affidavit on his own.

[2] The motion judge had before him an affidavit that certainly appeared to have been prepared by the appellant's solicitor and, as recited in para. 21 of his reasons, he did afford the appellant an opportunity to make his case:

[21] Mr. Pezzolesi then spoke for himself. The only evidence on his behalf that was properly before the court in response to the Defendant's motion to dismiss the action was his affidavit of September 22, 2010. He attempted to give evidence in a rambling, incoherent fashion, making mention of many points that were not covered in his affidavit. The court offered him plenty of opportunity to focus his argument and respond to the submissions of counsel for the Defendant, which he was ultimately unable to do so.

[3] On this record, we are not persuaded that to the extent the motion judge refused the appellant the right to adduce oral or additional documentary evidence, he erred. Nor are we persuaded that there is anything in the way the motion judge treated the appellant as a self-represented litigant that would justify the admission of the fresh evidence that has been tendered.

[4] Second, and in any event, we agree with the respondent that the motion judge did not err by dismissing the action for delay. This action was commenced in 1995. It was based on a 1989 transaction for a \$13,000 purchase of land and damages of \$750,000 are

claimed. Even on the appellant's version advanced in the fresh evidence that he promptly complied with Del Frate J.'s 2003 order for production, we are still left with an inexcusable delay in moving this action forward. There is evidence that a key witness has died and that memories have faded and hence that there would be prejudice to the respondent if the case were allowed to proceed in the face of the lengthy delay.

[5] Accordingly, the appeal is dismissed. Costs to the respondent fixed at \$9,000 inclusive of disbursements and applicable taxes.

“Robert J. Sharpe J.A.”

“E.E. Gillese J.A.”

“Karakatsanis J.A.”