

COURT OF APPEAL FOR ONTARIO

CITATION: Hawley v. Pennington, 2012 ONCA 594

DATE: 20120911

DOCKET: C55316

Cronk, Epstein and Hoy JJ.A.

BETWEEN

James B. Hawley, a partner of Steppe Financial Partnership

Plaintiff/Appellant

and

John Pennington, Howard Rubinoff and
Fogler Rubinoff LLP

Defendant/Respondent (John Pennington)

Ronald S. Sleightholm, for the appellant

Craig R. Colrairie, for the respondent John Pennington

Heard and released orally: September 5, 2012

On appeal from the judgment of Justice C. William Hourigan of the Superior Court of Justice, dated March 12, 2012.

ENDORSEMENT

[1] The appellant appeals from the judgment of Hourigan J. of the Superior Court of Justice dated March 12, 2012, granting summary judgment in favour of the respondents. The judgment concerned the appellant's claim that the respondent Pennington's actions caused 5400 Dixie Road Inc. ("5400 Inc.") to lose its business, thereby depriving the appellant, as a shareholder of 5400 Inc.,

of his share of 5400 Inc.'s annual income in management fees (approximately \$30,000 per year).

[2] In our view, the appeal must be dismissed, essentially for the reasons of the motion judge. In particular, we note the following:

1. 5400 Inc. was placed in liquidation in December 2004 by consent court order;
2. the effect of the liquidation order was to require that 5400 Inc. be replaced as the general partner of two limited partnerships involved with the Stage West Hotel in Mississauga;
3. the process for the replacement of 5400 Inc. as the general partner of the limited partnerships was ultimately determined by court order dated April 4, 2005. Hawley's appeal from that order was dismissed by this court, as was his earlier request for a stay of the order pending his appeal;
4. the election of the replacement general partner, an entity associated with the respondent Pennington, was approved by court order dated July 18, 2005. Hawley did not appeal that confirmation order; and
5. once 5400 Inc. was wound up and replaced as general partner of the two limited partnerships, it ceased to exist and therefore had no legal capacity to generate further management fees.

[3] In all these circumstances, the loss of 5400 Inc.'s business was occasioned by its consent liquidation, not by any actions of the respondent Pennington. That a corporation associated with Pennington was thereafter appointed the new general partner and realized the income previously earned by 5400 Inc. in no way alters this conclusion.

[4] We note that the appellant relies on a suggested comparison between this case and a dispute between the parties concerning Canadian Equity Resources Corporation (“CER Corp.”), another corporation previously owned by the parties. We do not regard this suggested comparison as helpful. The facts regarding the CER Corp. dispute are distinguishable from the facts of this case. For example, the replacement of the general partner in that case was not approved by court order. In any event, there was no court determination that Pennington’s conduct in relation to CER Corp. was oppressive in any way: the CER Corp. dispute was settled by the parties following a mid-trial pre-trial.

[5] The appeal is dismissed with costs of the appeal to the respondents in the amount of \$6,000, inclusive of disbursements and all applicable taxes.

“E.A. Cronk J.A.”

“G.J. Epstein J.A.”

“Alexandra Hoy J.A.”