

COURT OF APPEAL FOR ONTARIO

CITATION: Maftoun v. Banitaba, 2012 ONCA 786

DATE: 20121116

DOCKET: M41718 (C55634)

Weiler J.A. (In Chambers)

BETWEEN

Zahra Maftoun

Plaintiff (Appellant/Moving Party)

and

Seyed Hassan Banitaba, Mahmoud Zargar  
and Law Society of Upper Canada

Defendants (Respondents/Responding Parties)

Zahra Maftoun, acting in person

David Quayat, as duty counsel

Hossein Niroomand, for responding party, Seyed Hassan Banitaba

Mahmoud Zargar, acting in person

Heard: November 14, 2012

On appeal from the judgment of Justice Leonard Ricchetti of the Superior Court of Justice, dated May 22, 2012 and on a motion to remove counsel of record.

**Weiler J.A. (in chambers):**

[1] The appellant, Ms. Maftoun, brings this motion to remove the solicitor of record for each of the respondents so that these solicitors will not be able to argue the appeal from the dismissal of her action against the respondents.

[2] The appellant submits that Mr. Niroomand, who represented Mr. Zargar at trial, and Mr. Chahal, who similarly represented Mr. Banitaba, have a conflict of interest and an interest adverse to that of their clients. Allowing them to continue to represent their clients on the appeal would lead to the possibility or probability of mischief.

[3] She also asserts that the respondents' solicitors knowingly took steps to mislead the trial judge with the result that the trial judge erred in his findings on the key issues of the trial. She may wish to call them as witnesses on the appeal.

[4] The values with which the court is concerned in this motion are: (1) the integrity of our system of justice through the maintenance of high standards in the legal profession; and (2) the value that a litigant should not be deprived of his or her choice of counsel without good cause: *MacDonald Estate v. Martin* [1990] 3 S.C.R. 1235.<sup>1</sup> The test is whether a fair-minded and reasonably informed member of the public would conclude that counsel's removal is necessary for the proper administration of justice: *N.M. Davis Corp. v. Ross* (2012) 110 (O.R.) (3d) 196.

[5] While Ms. Maftoun has made a number of serious allegations, I see nothing in the material she has filed that supports them. A number of the

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<sup>1</sup> The third consideration in *MacDonald*, namely, the desirability of permitting reasonable mobility in the legal profession, has no relevance to this motion.

arguments she makes are related to the grounds of her appeal and are not relevant to this motion.

[6] In addition to the importance of sustaining the value of a party's counsel of choice where possible, the removal of counsel for the respondents would cause them prejudice. Both respondents speak Farsi as do their counsel. Mr. Zargar, who was self-represented today, required and had the assistance of an interpreter who speaks Farsi. The importance of being able to communicate in the language of one's choice is important as it enables the most full and free exchange of information, facilitates the giving of instructions and helps to avoid the possibility of miscommunication. While Ms. Maftoun submits that there are at least 40 lawyers who speak Farsi in the area, requiring the respondents to engage new counsel would mean that they would have to incur increased costs because some time would be required for new counsel to familiarize themselves with the record at trial. The relationship between a solicitor and his or her client is a personal one and it is by no means certain that the respondents would have the same level of confidence in new counsel that they have in their present counsel.

[7] Insofar as the appellant submits that she may wish to call counsel as witnesses, this is an appeal. The appeal is on the record and *viva voce* evidence is extremely rare. For the court to hear *viva voce* evidence, Ms. Maftoun would have to successfully apply to have fresh evidence admitted and explain why the

court should hear *viva voce* evidence. That is not the situation before me at this time. A fair-minded and reasonably informed member of the public would not conclude that removal of counsel is necessary for the proper administration of justice.

[8] Accordingly, the motion is dismissed.

[9] I wish to thank Mr. David Quayat who acted as duty counsel for his very helpful submissions.

Released: