

COURT OF APPEAL FOR ONTARIO

CITATION: Pasquale Doldo (Canadian Construction and Trucking) v. 1497601
Ontario Limited (Weston Gate Gardens), 2014 ONCA 73
DATE: 20140127
DOCKET: M42236 (C56591)

Weiler, Rouleau and Strathy JJ.A.

BETWEEN

Pasquale Doldo c.o.b. as
Canadian Construction and Trucking

Plaintiff (Respondent)

and

1497601 Ontario Limited c.o.b. as
Weston Gate Gardens

Defendants (Appellant)

Kevin Sherkin for the moving party

J. Richard Forget for the respondent

Heard and released orally: January 16, 2014

Motion to quash the appeal from the Judgment of Justice Andra Pollak of the Superior Court of Justice, dated January 9, 2013, the order of Justice Andra Pollak, dated March 22, 2012, and the order of Master Dash, dated June 21, 2013.

ENDORSEMENT

[1] This is a motion to quash on the basis that the court has no jurisdiction.

The appellant's statement of defence and counterclaim were struck by the

Master. He initially sought leave to appeal that decision to the Divisional Court but then abandoned that request.

[2] At trial, the appellant was allowed to make submissions but the trial judge found that the respondent had proved its damages. The appellant appealed to this court.

[3] The appellant submits that the decision below was not a default judgment. In addition, he submits that the order striking his counterclaim was a final order and that the appeal lies to this court.

[4] We disagree. The decision below was a default judgment: See *National Bank of Canada v. Royal Bank of Canada* (1999), 44 O.R. (3d) 533. The appellant's proper remedy is a motion to set aside the default judgment.

[5] With respect to the dismissal of the counterclaim, an appeal lies from a final order of a Master to the Divisional Court: s. 19(1)(c) *Courts of Justice Act*, R.S.O. 1990, c. C 43.

[6] The court was also advised at the conclusion of submissions that in any event as this was a construction lien action the appeal from a final order is statutorily mandated to the Divisional Court. See ss. 70 and 71 *Construction Lien Act* R.S.O. 1990 c. C 30

[7] For these reasons the appeal is struck.

[8] Costs of the motion are to the respondent fixed in the amount of \$5,500 inclusive all applicable taxes and disbursements.

“K. M. Weiler J.A.”

“Paul Rouleau J.A.”

“G. R. Strathy J.A.”