COURT OF APPEAL FOR ONTARIO

CITATION: Walchuk Estate v. Houghton, 2015 ONCA 862
DATE: 20151209
DOCKET: M45220 (C60317)

Laskin, Pardu and Roberts JJ.A.

BETWEEN

Mary Walchuk, Estate Trustee for Walter Walchuk, deceased

Plaintiff (Respondent/Moving Party)

and

Walter Houghton also known as Wilfred Houghton also known as Wilfred W. Houghton also known as Wilfred P. Houghton

Defendant (Appellant/Responding Party)

Andrew Sheremeta, for the moving party

Michael Jaeger, for the responding party

Heard: November 23, 2014

By the Court:

[1] The respondent, Mary Walchuk, has brought a motion to quash this appeal from the judgment of Harper J. dated March 9, 2015. The issue on the motion is whether Harper J.'s judgment is a final or interlocutory order. If it is a final order the motion fails; if it is an interlocutory order the motion succeeds. For the brief reasons that follow, we have concluded that the order is final.

A. Chronology

(a) Background

[2] In 2011, Walchuk obtained a judgment against Houghton for $105,000. In December 2013, Walchuk sought to examine Houghton in aid of execution on the judgment. Houghton did not attend the examination. Walchuk then brought a motion for contempt.

[3] The contempt motion first came on before Harper J. on September 5, 2014. He adjourned the contempt motion and ordered Houghton to attend at an examination in aid of execution on September 17, 2014, and to bring with him to that examination numerous documents requested by Walchuk.

[4] On September 16, 2014, the day before the scheduled examination, Houghton filed for bankruptcy. During oral argument on this motion, we were told a trustee in bankruptcy is in place but has elected not to take part in these proceedings.

[5] Houghton did attend the examination on September 17, 2014, but brought none of the documents requested. He took the position that because of s. 69 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (*BIA*), the contempt proceedings against him were stayed.

[6] After Houghton failed to produce documents, Walchuk renewed her motion for contempt. She claimed that Houghton had failed to comply with Harper J.'s order of September 5, 2014. The contempt motion was heard by Harper J. in February of this year, and he released his reasons on March 9, 2015.

(b) Harper J.'s Judgment of March 9, 2015

[7] The issue before Harper J. was whether s. 69(1)(a) of the *BIA* stayed the contempt proceedings. That section states:

> 69(1) subject to subsections (2) and (3), and sections 69.4, 69.5 and 69.6, on the filing of a notice of intention under section 50.4 by an insolvent person,
>
> (a) no creditor has any remedy against the insolvent person or the insolvent person's property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy…

[8] Although leave may be granted to lift the stay provided by s. 69, no leave has been sought. Nonetheless, Harper J. concluded that s. 69 did not stay the contempt proceedings against Houghton. He wrote at para. 22 of his reasons:

> I am of the view that the motion for contempt before me is one that goes directly to the issue of the court's ability to enforce its judgments. The order I made was an order that called for the defendants to do certain things. Whether he did them or not cannot be caught up in his choice of the timing of his filing for bankruptcy. I find that the motion for contempt may proceed.

[9] Harper J. did not rule on the contempt motion. Instead he ordered that it be heard on a date to be fixed by the trial coordinator. Although the contempt motion has not been heard, Houghton appealed Harper J.'s March 9 judgment.

(c) Further proceedings

[10] The contempt motion was scheduled for August 18, 2015. In June, Houghton brought a motion before Tulloch J.A. to stay the contempt proceedings pending his appeal. Walchuk brought a cross-motion to quash the appeal. Tulloch J.A. properly adjourned the motion to quash to a full panel, but dismissed Houghton's motion to stay on the ground Harper J.'s judgment was an interlocutory order.

B. Discussion

[11] On her motion to quash, Walchuk submits that the judgment of Harper J. is an interlocutory order because he did not rule on the contempt motion. Instead, he simply ordered the motion to be heard at a later date. She relies on Tulloch J.A.'s endorsement which held that the judgment under appeal is from an interlocutory order. Houghton on the other hand, submits that the order under appeal is final because Harper J. determined a substantive question: whether Houghton may still be subject to contempt proceedings despite s. 69 of the *BIA*.

[12] The question whether orders under appeal are final or interlocutory has generated a lot of case law in this court. Some of the cases are not easily

reconcilable. The starting point is to look at the judgment or order itself, and not the reasons for judgment. See *Ashak v. Ontario*, 2013 ONCA 375; and *Trainor v. Canada (Customs and Revenue Agency)*, 2011 ONCA 794.

[13] Here, if one were to look at the judgment of Harper J. alone, his order appears to be interlocutory. It adjourns, rather than finally disposes of, the contempt motion. That was the view taken by our colleague, Tulloch J.A.

[14] But, in some cases, to determine whether an order is truly final or interlocutory, one needs to look at the reasons. This is one of those cases. If the reasons show that a defendant has been deprived of a substantive right or defence that could resolve all or part of the proceedings, then the order is final. See *Ball v. Donais*, [1993] O.J. No. 972; *Abbot v. Collins*, [2002] O.J. No. 4058; *Ashak*, at para. 17.

[15] In this case, the only question before Harper J. – and it was a question of law – was whether Houghton could still be liable for contempt though he had declared bankruptcy. Harper J. decided that question. Had he ruled that s. 69 of the *BIA* stayed the contempt proceedings, that ruling would have put an end to those proceedings. Because he ruled otherwise, Houghton has potentially been deprived of a right or defence that would have ended the proceedings against him. For this reason, Harper J.'s judgment is a final order. Of course, whether Harper J. was right or wrong must be decided by the panel hearing the appeal.

[16] The motion to quash is dismissed with costs fixed at $6,000 inclusive of disbursements and applicable taxes.

Released: December 9, 2015 (“G.P.”)

“John Laskin J.A.”
“G. Pardu J.A.”
“L.B. Roberts J.A.”