

COURT OF APPEAL FOR ONTARIO

CITATION: Walderman v. Investia Services Financiers Inc., 2018 ONCA 505

DATE: 20180531

DOCKET: C64702 and C64703

Feldman, MacPherson and Rouleau JJ.A.

BETWEEN

Teri Walderman

Plaintiff
(Appellant)

and

Investia Services Financiers Inc., Investia Financial Services Inc., Asl Direct Inc.,
Asg Financial Corp., Panfinancial Group Services Ltd., Panfinancial Investments
Inc., Panfinancial Investments Management Ltd., Panfin Wealth Management
Group Inc., Panfinancial Group Services Inc., Panfinancial Investments Group Inc.,
Pan Financial Investments Services Inc., Panfinancial Services Inc., Pan
Financial Inc., Panfinancial Services Corp., Panfinancial Insurance Agencies
Limited, Panfin Equicap Ltd., Gordon Berger, Trevor Rabie, Aaron Cohen, Eran
Ostfeld and Lily Ostfeld

Defendants
(Respondents)

Julian Binavince, for the appellant

Judy Hamilton, for the respondent Trevor Rabie

Sam Robinson, for the respondent Aaron Cohen

Maureen Doherty, for the respondents Investia Financial Services Inc. and CMC
Markets Inc.

Heard and released orally: May 30, 2018

On appeal from the order of Justice Petersen of the Superior Court of Justice,
dated November 15, 2017.

REASONS FOR DECISION

[1] The court was advised immediately prior to the hearing of the appeal and at the opening that all of the respondents other than Mr. Rabie consent to the setting aside of the order under appeal. The appeal proceeded as between the appellant and Mr. Rabie only.

[2] In our view the appeal must be allowed and the order of Justice Petersen dismissing the entire action, including against Mr. Rabie be set aside. The motion judge proceeded on the misunderstanding that Mr. Rabie was no longer a defendant in the action (para. 25). In fact, in July 2017 in a motion before Justice Donohue, it was made clear that the default judgment that had been obtained against Mr. Rabie was set aside in respect of the breach of fiduciary duty claim, which claim was ordered to proceed to trial.

[3] The status motion in August before Justice Petersen was unopposed by Mr. Rabie. That position had been taken in February on the original return date and was never changed including at or after the July 2017 appearance before Justice Donohue.

[4] As Justice Petersen misapprehended the status of the action as against Mr. Rabie and that the order for a litigation timetable was unopposed by him for the fiduciary duty claim, it would not be fair or appropriate for Mr. Rabie to now resile from that position.

[5] The proposed fresh evidence was available at the time of the motion and does not assist Mr. Rabie in any event. We therefore do not admit the fresh evidence.

[6] The appeal is allowed, the order is set aside and the parties are ordered to set and attend a status hearing to establish a litigation timetable. Costs to the appellant fixed in the amount of \$10,000, inclusive of disbursements and HST.

“K. Feldman J.A”

“J.C. MacPherson J.A.”

“Paul Rouleau J.A.”