

COURT OF APPEAL FOR ONTARIO

CITATION: Buffone v. Sokil, 2023 ONCA 168

DATE: 20230309

DOCKET: M54099 (COA-23-CV-0195)

van Rensburg J.A. (Motion Judge)

BETWEEN

Elizabeth Ann Buffone

Applicant
(Responding Party/Respondent)

and

Barbara Lynn Sokil, in her capacity as executrix for the Estate of Eleanor Bobbie,
deceased, and in her personal capacity, and William M. Sokil

Respondents
(Moving Party/Appellant
Responding Party/Respondent)

Barbara Lynn Sokil, appearing in person

Christopher Salazar, for the responding party BMO Trust Company, in its
capacity as Estate Trustee During Litigation of the Estate of Eleanor Bobbie

William Sokil, appearing in person

Rachel Jennings, for the responding party Elizabeth Ann Buffone

Heard and released orally: March 7, 2023

ENDORSEMENT

[1] This is a motion for a stay of an order pending appeal. The motion is
opposed by the Bank of Montreal Trust Company (“BMO Trust Company”), the
Estate Trustee During Litigation (“ETDL”) for the Estate of Eleanor Bobbie.

Mr. Sokil and counsel for Ms. Buffone attended the hearing of the motion but did not take a position.

[2] The order in question was made by Gilmore J. on February 17, 2023. She found the moving party, Ms. Sokil, in contempt of paras. 8, 9 and 18 of the order of Cavanagh J. dated September 23, 2022. The terms of that order were settled in an appearance before Cavanagh J. on December 13, 2022. The order is sometimes referred to by the later date.

[3] Justice Cavanagh's order, which was not appealed, appointed the BMO Trust Company as ETDL of the estate of the deceased. The order vested in the ETDL the property of the deceased, including a house in Toronto, which is the main, if not only, asset of the estate, and where Ms. Sokil has been living. Ms. Sokil, who was the alternate estate trustee named in the will (alternate to the deceased's husband who had predeceased her), was removed from title as owner of the house. She had been registered on title as Estate Trustee with a Will, and she was replaced as owner by the ETDL. Paragraph 8 of Cavanagh J.'s order required the parties, including Ms. Sokil, to provide records to, and to reasonably cooperate with, the ETDL. Paragraph 9 required the parties to deliver estate funds to the ETDL within seven days of the order. Paragraph 18 provided that the ETDL was entitled to enter onto the property on 24 hours notice to Ms. Sokil, to fulfill its duties, including gathering any papers or documents relevant to the administration of the estate. Other paragraphs of the order provided for the ETDL to have vacant

possession of the property within 120 calendar days from December 13, 2022 (which is April 13, 2023) and granted leave to the ETDL to issue a writ of possession with respect to the property that would not be enforced until that date.

[4] Justice Gilmore delivered detailed reasons for her order of February 17, 2023, including validating service on Ms. Sokil, refusing her request for an adjournment, and finding her in contempt. She noted that Ms. Sokil had not filed any material to respond to the contempt motion, apart from an exchange of emails with the ETDL's counsel. Justice Gilmore applied the test for contempt set out in the leading authority, *Carey v. Laiken*, 2015 SCC 17, [2015] 2 S.C.R. 79. She found on the evidence that Ms. Sokil had not complied with paras. 8, 9 and 18 of Cavanagh J.'s order.

[5] In particular, Gilmore J. accepted the evidence of the Property Manager retained by the ETDL about what occurred on December 20, 2022, when he attended at the house for an inspection. Although Ms. Sokil had not put evidence before the court, Gilmore J. set out the account she provided at the hearing, and then explained why it was rejected. She also referred to Ms. Sokil's communication on December 27, 2022, containing an outright denial of access to the house. Having found Ms. Sokil in contempt, Gilmore J. made an order requiring her to vacate the property by March 10, 2023. In other words, she moved up the date contained in Cavanagh J.'s order because, as she said, the "evidence on [the]

motion makes it clear that Ms. Sokil has no intention of complying with the Cavanagh order” and “there is no point in delaying matters.”

[6] I turn to Ms. Sokil’s request for a stay. A moving party in a motion for a stay of an order pending appeal must establish that the appeal raises a serious issue; the denial of the stay will result in irreparable harm; and the balance of convenience favours the relief sought: *Belton v. Spencer*, 2020 ONCA 623, 58 C.P.C. (8th) 16.

[7] Ms. Sokil indicates that she is moving to stay all aspects of the order pending appeal. It is fair to say however that her main concern is with the part of the order that requires her to vacate the property by March 10, 2023. She did not in her submissions address the test for a stay, nor did she provide evidence relating to the test. Instead, she attempted to reargue the issues that were before Cavanagh J., including the appointment of the ETDL.

[8] I have carefully reviewed the materials that Ms. Sokil filed on her motion to this court, as well as her notice of appeal. Regrettably, there is nothing in the appeal that meets the serious issue threshold. Nothing in the reasons of Gilmore J. or in Ms. Sokil’s submissions persuades me that the appeal has any arguable merit. Nor has Ms. Sokil demonstrated irreparable harm. She has known for some time that she is required to vacate the house where she has been living rent free. When asked specifically whether she would move out by April 13, 2023, the original date contemplated in Cavanagh J.’s order, she replied that she would not.

The balance of convenience clearly favours the ETDL. Ms. Sokil has not complied with her obligations under the Cavanagh J. order; indeed she is refusing to recognise the validity of that order. Justice Gilmore's order requiring Ms. Sokil to vacate the house by March 10, 2023 was an appropriate sanction for the contempt that was found, and there is no reason to delay the enforcement of that order.

[9] Accordingly, the motion for a stay is dismissed.

[10] Costs are awarded to the ETDL in the inclusive sum of \$1,500, to be paid out of Ms. Sokil's portion of the estate.

"K. van Rensburg J.A."