

COURT OF APPEAL FOR ONTARIO

CITATION: KingSett Mortgage Corporation v. 30 Roe Investments Corp.,
2023 ONCA 196
DATE: 20230320
DOCKET: M54109 (COA-23-CV-0215)

Lauwers J.A. (Motion Judge)

BETWEEN

KingSett Mortgage Corporation

Plaintiff
(Responding Party/Respondent)

and

30 Roe Investments Corp.

Defendant (Appellant)

Mervyn D. Abramowitz and Lucas Strezos, for the moving party

Carlie Fox, for the Receiver of 30 Roe Investment Corp., KSV Restructuring Inc.

Richard Swan, for the responding party

Heard: March 17, 2023

ENDORSEMENT

[1] Blaney McMurtry LLP (“Blaneys”) moved for an order under r. 15.04 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, seeking to remove the firm as lawyer of record for the Appellant, 30 Roe Investment Corp. (“30 Roe”). I dismissed the motion with reasons to follow. These are the reasons.

A. CONTEXT FOR THE MOTION

[2] Blaneys served a notice of appeal dated February 23, 2023 from the decision of Steele J. dated February 13, 2023 granting and approving a vesting order relating to the sale of two condominium units by KSV Restructuring Inc., the Receiver of 30 Roe, to close by the end of March 2023. The appeal jeopardizes the transaction.

[3] On March 1, 2023, the Receiver served a motion for an Order to quash 30 Roe's appeal, to expedite the hearing of the Appeal, and to lift any automatic stay of proceedings arising as a result of the appeal. The Receiver's motion is scheduled before a panel of three Judges of the Court of Appeal on March 27, 2023.

[4] The background to the motion is taken from the affidavit of Chad Kopach, a Blaneys partner.

[5] The lender, KingSett Mortgage Corporation, brought a receivership application against 30 Roe. On May 9, 2022, KSV Restructuring Inc. was appointed as receiver and manager over certain assets and undertakings of 30 Roe, including but not limited to certain real property. The principal of 30 Roe is Raymond Zar.

[6] On February 7, 2023, the Receiver brought a motion for two approval and vesting orders from the Superior Court in respect of the sale of two condominium units.

[7] Arguments started before Steele J. of the Commercial List on February 7, 2023 and were adjourned to February 13, 2023, when the decision was expected. Due to the illness of one of 30 Roe's lawyers at Blaneys, the matter was again adjourned to February 16, 2023.

[8] In her endorsement dated February 13, 2023, Steele J. approved the transactions and granted the approval and vesting orders.

[9] Mr. Kopach states that: "On or about February 17, 2023, Zar advised Blaneys that he wished to appeal the AYO Orders, and instructed Blaneys to proceed with the appeal." On February 23, 2023, Blaneys served the notice of appeal but advised Zar that it would be bringing a motion to get off the record if he did not retain new counsel. Mr. Kopach also attests that Blaneys "advised Zar on multiple occasions... that it will no longer act for 30 Roe, the Remaining Zar Companies or Zar personally."

[10] By endorsement dated March 10, 2023, Steele J. removed Blaneys as lawyers of record for 30 Roe in the underlying matter before the Superior Court of Justice (Commercial List). Her endorsement provides additional context:

Counsel for the Receiver on the Kingsett Matter advised that Blaneys is the fifth firm the debtor has retained in the receivership proceedings.

The Receiver states that Blaneys' withdrawal should not interfere with the progress of the receivership. The Receiver advised the Court that its efforts will continue in accordance with the existing orders of this Court. In the event that 30 Roe intends to take a position or act in these proceedings, it should act expeditiously to retain Counsel.

The Receiver further advised the Court that Blaneys filed a Notice of Appeal on behalf of the Company at the Ontario Court of Appeal to prevent two sales approved by Court Orders dated February 7, 2023 from closing. The Receiver has brought a motion to quash this appeal so that the sales may proceed.

Accordingly, the Receiver states that while it is not opposing Blaneys' removal in these proceedings, this is without prejudice to the Receiver's right to oppose Blaneys' removal as counsel of record at the Court of Appeal, as the matter before the Court of Appeal is urgent.

Kingsett reiterated that my Order removing Blaneys as counsel of record for 30 Roe is restricted to the Superior Court of Justice proceedings and emphasized the urgency of the matter pending before the Court of Appeal. Although Kingsett does not oppose Blaneys removal as counsel of record for 30 Roe in this Court, Kingsett is concerned about further delays by Mr. Zar given the history of this matter.

...

Blaneys provided the court with unredacted motion materials. The reasons for Blaneys' decision to withdraw as counsel are confidential. That portion of the motion was conducted *in camera* without the participation of any of the parties. I am satisfied that there has been an

irreparable breakdown in the relationship between Blaneys and Mr. Zar.

[11] As noted, Steele J. granted an order taking Blaneys off the record.

B. ANALYSIS

[12] I too was provided with an unredacted record and in ordinary circumstances would not hesitate to give a similar order respecting Blaneys' involvement in the appeal. But these are not ordinary circumstances.

[13] There is relatively sparse law on when the court should exercise its discretion to refuse to take a law firm off the record. The cases focus on the interests of the client: see *R. v. Cunningham*, 2010 SCC 10, [2010] 1 S.C.R. 331, at paras. 49-50, and *Todd Family Holdings Inc. v. Gardiner*, 2015 ONSC 6590, 127 O.R. (3d) 714. The administration of justice must also be considered: *Cunningham*, at para. 45.

[14] I am satisfied that Blaneys gave 30 Roe and Mr. Zar adequate notice of the need to appoint new counsel expeditiously. That has not yet occurred and might not. However, the other parties fear that a lawyer will show up on the eve of the argument of the motion to quash and request an adjournment, which, if granted, would give Mr. Zar the result he wants, that the transactions do not close.

[15] In this case the court-appointed receiver has given its best advice to the court, which the court accepted. Priority should in this case be given to the

administration of justice, not to the interests of Blaneys in avoiding the possibly unremunerated expense of further involvement.

[16] It is clear from the affidavit of Mr. Kopach that Blaneys had no intention of proceeding with the appeal. There is, in my view, an ethical obligation on an officer of the court to do no harm to court proceedings. Here, by launching a zombie appeal in which it intended to have no involvement, Blaneys knew that it was throwing a grenade into receivership proceedings in which it had participated. This action is disrespectful of the court. What Blaneys ought to have done was not to have filed a notice of appeal, leaving it to 30 Roe and Mr. Zar to take whatever steps they thought appropriate once Blaney exited, as the firm could have done under the order of Steele J. on March 10. Instead, Blaneys permitted its status as an officer of the court and the solicitor of record to be abused.

[17] Mr. Kopach's affidavit of March 1 states, at para. 18: "There are no other approaching deadlines in the Receivership, nor in the other four SCJ Matters for that matter." But, as Steele J. noted in her March 10 endorsement, this does not tell the whole story:

The Receiver further advised the Court that Blaneys filed a Notice of Appeal on behalf of the Company at the Ontario Court of [Appeal] to prevent two sales approved by Court Orders dated February 7, 2023 from closing. The Receiver has brought a motion to quash this appeal so that the sales may proceed.

[18] While it is rare for a court to exercise its discretion and refuse to permit a law firm to get off the record, this is one such instance. There is some ceremony around a lawyer getting on and off the record before the court, as is revealed in r. 15, for good reason. Lawyers are in many ways the privileged gatekeepers to the courts and should take their obligations seriously, both to clients, the other parties in lawsuits, and to the court.

C. DISPOSITION

[19] For these reasons, I dismissed Blaneys' motion for an order under r. 15.04 of the *Rules of Civil Procedure* removing the firm as lawyer of record for the appellant, 30 Roe Investment Corp. Unless the appellant appoints new counsel, Blaneys is to remain counsel of record until the final disposition of the motion to quash on March 27, 2023.

“P. Lauwers J.A.”