

COURT OF APPEAL FOR ONTARIO

CITATION: Libfeld v. Libfeld, 2023 ONCA 235

DATE: 20230404

DOCKET: C69714, C69751, C70031 & C70032

Roberts, Miller and Nordheimer JJ.A.

DOCKET: C69714

BETWEEN

Mark Libfeld, 1331081 Ontario Inc., 2091170 Ontario Inc.
and Vitanna Construction Ltd.

Applicants (Respondents)

and

Sheldon Libfeld, Corey Libfeld, Jay Libfeld,
Shelfran Investments Ltd. and Viewmark Homes Ltd., and their respective
affiliates and subsidiaries as set out on Schedule "A" to the Notice of Application

Respondents (Appellant)

AND BETWEEN

Sheldon Libfeld, 1331088 Ontario Inc., Corey Libfeld,
1331078 Ontario Inc., Jay Libfeld and 1331091 Ontario Inc.

Applicants (Appellants/Respondents)

and

Mark Libfeld, 13318081 Ontario Inc., Edith Lorraine Libfeld
and The Conservatory Group Companies (as listed in schedule A)

Respondents (Respondents)

DOCKET: C69751

AND BETWEEN

Mark Libfeld, 1331081 Ontario Inc., 2091170 Ontario Inc.
and Vitanna Construction Ltd.

Applicants (Appellants)

and

Sheldon Libfeld, Corey Libfeld, Jay Libfeld, Shelfran
Investments Ltd. and Viewmark Homes Ltd., and their respective
affiliates and subsidiaries as set out on Schedule "A" to the Notice of Application

Respondents (Respondents)

DOCKET: C70031

AND BETWEEN

Mark Libfeld, 1331081 Ontario Inc., 2091170 Ontario Inc. and
Vitanna Construction Ltd.

Applicants (Respondents)

and

Sheldon Libfeld, Corey Libfeld, Jay Libfeld, Shelfran
Investments Ltd. and Viewmark Homes Ltd., and their respective
affiliates and subsidiaries as set out on Schedule "A" to the Notice of Application

Respondents (Appellants/Respondent)

DOCKET: C70032

AND BETWEEN

Sheldon Libfeld, 1331088 Ontario Inc., Corey Libfeld,
1331078 Ontario Inc., Jay Libfeld and 1331091 Ontario Inc.

Applicants (Appellants/Respondent)

and

Mark Libfeld, 1331081 Ontario Inc., Edith Lorraine Libfeld and The
Conservatory Group Companies (as listed in Schedule A)

Respondents (Respondents)

Paul Steep, Holly Kallmeyer and Ian Hull, for the appellants (C69714) and respondents (C69751, C70031 and C70032), Corey Libfeld and 1331078 Ontario Inc.

Peter H. Griffin, Kathleen Glowach and Sarah Bittman, for the appellants (C69751) and respondents (C69714, C70031 and C70032), Mark Libfeld, 1331081 Ontario Inc., 2091170 Ontario Inc., and Vitanna Construction Ltd.

David Chernos, Patrick Flaherty and Bryan MacLeese, for the appellants (C70031 and C70032) and respondents (C69714 and C69751), Sheldon Libfeld and 1331088 Ontario Inc.

Gary Luftspring and Andrea Sanche, for the appellants (C70031 and C70032) and respondents (C69714 and C69751), Jay Libfeld and 1331091 Ontario Inc.

Harvey Chaiton, for the Court-Appointed Sales Officer

Heard: September 29, 2022

On appeal from the judgment of Justice Thomas J. McEwen of the Superior Court of Justice, dated October 25, 2021, with reasons reported at 2021 ONSC 4670.

COSTS ENDORSEMENT

[1] On February 28, 2023, this court released its reasons for judgment for these grouped appeals, and the parties were invited to make written submissions on costs of the appeals. The appeals brought by the Mark Libfeld and Corey Libfeld parties – on the narrow issue of whether it was an error for the motion judge to exclude the Shanontown transaction from the wind-up order – were unsuccessful, with the appeals dismissed without calling on the respondents. The appeals brought by the Jay Libfeld and Sheldon Libfeld parties – on the similarly narrow issue of whether a single procedural provision in the wind-up order was made in error – were successful.

[2] Accordingly, Jay and Sheldon are entitled to costs payable by Mark and Corey both for Jay's and Sheldon's success in their appeal of the certification provision in the wind-up order, and for successfully resisting the Shanontown appeals brought by Mark and Corey.

[3] However, the amounts sought by Jay and Sheldon – totalling over \$280,000 in costs and disbursements – are excessive. Although the underlying proceeding was lengthy and complex, the appeals were not, having benefitted from case management that narrowed the issues and guided the parties to prepare appropriately focussed materials.

[4] As counsel for Mark and Corey point out, there was considerable duplication in the materials filed by Jay and Sheldon, and it is not reasonable to expect parties to pay twice for work that was done once and essentially repackaged. The costs sought by Jay and Sheldon are disproportionate to the work that was necessary for the appeals.

[5] Accordingly, we order the following costs schedule:

- For the Certification appeals (C70031 and C70032):
 - Mark shall pay to Jay \$7,500 inclusive of disbursements and HST;
 - Mark shall pay to Sheldon \$15,000 inclusive of disbursements and HST;
 - Corey shall pay to Jay \$7,500 inclusive of disbursements and HST;
 - Corey shall pay to Sheldon \$15,000 inclusive of disbursements and HST.
- For Mark's Shanontown appeal (C69751):
 - Mark shall pay to Jay \$10,000 inclusive of disbursements and HST;
 - Mark shall pay to Sheldon \$20,000 inclusive of disbursements and HST.

- For Corey's Shanontown appeal (C69714):
 - Corey shall pay to Jay \$7,500 inclusive of disbursements and HST;
 - Corey shall pay to Sheldon \$15,000 inclusive of disbursements and HST.

"L.B. Roberts J.A."

"B.W. Miller J.A."

"I.V.B. Nordheimer J.A."