COURT OF APPEAL FOR ONTARIO

CITATION: Hrvoic v. Hrvoic, 2023 ONCA 288
DATE: 20230427
DOCKET: M54002 (C70129)

Feldman, Gillese and Huscroft JJ.A.

BETWEEN

Dag Hrvoic

Applicant
(Appellant/Moving Party)

and

Melissa Hrvoic

Respondent
(Respondent/Responding Party)

AND BETWEEN

Melissa Hrvoic

Plaintiff
(Respondent/Responding Party)

and

Dag Hrvoic and 1427830 Ontario Corporation

Defendants
(Appellant/Moving Party)

Gregory M. Sidlofsky, for the moving party

David Taub and Samuel Mosonyi, for the responding party

Heard: April 21, 2023

Gillese J.A.:

[1] In reasons dated January 13, 2023, Coroza J.A., sitting as a single judge of this court, granted the respondent's motion and ordered the partial lifting of the automatic stay pending appeal imposed pursuant to r. 63.01(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

[2] The appellant moves for a review of that order (the "Motion"). He submits that the chambers judge erred in principle and reached an unreasonable result by making findings about the respondent's financial circumstances without evidence about her assets and without the respondent asserting she was in financial difficulty.

[3] For the reasons that follow, I would dismiss the Motion.

Background

[4] In the underlying action, the appellant sought to compel his estranged wife, the respondent, to sell her shares in the parties' technology business. The trial judge determined that the respondent owned a 50% interest in the business. She valued the business at $10,800,000 and ordered the appellant to pay the respondent $5,400,000 for the purchase of her shares.

[5] The appellant appealed. Pursuant to r. 63.01(1), the trial judgment was automatically stayed. The respondent then brought a motion asking that the stay

be partially lifted, pending appeal, in respect of $2,686,437.31. On the stay motion, counsel for the respondent accepted that payment of the money should be subject to a transfer of some of the shares in the company.

[6] The chambers judge granted the motion and lifted the stay to the extent of $1,874,400. In accordance with *SA Horeca Financial Services v. Light,* 2014 ONCA 811, 123 O.R. (3d) 542, the chambers judge considered: (i) the financial hardship to the respondent if the stay was not lifted, (ii) the respondent's ability to repay or provide security for the amount paid, and (iii) the merits of the appeal.

[7] Before the chambers judge, the appellant submitted that the respondent had not provided evidence of financial hardship nor had she sworn that she was suffering financial hardship. The chambers judge rejected that submission. He noted the following unchallenged assertions in the respondent's affidavit on the motion: the appellant removed her as an officer and director of the business and terminated her employment with it; the COVID-19 pandemic made it difficult for her to find a new job because she had been working in a highly specialized field in the business since 1998; and, she was unemployed and had no employment income from the time of her dismissal until she began a new job in April 2022.

[8] While the respondent did not propose a means of securing any money realized from the lifting of the stay, the chambers judge found that, understood in context, this factor supported the respondent's request. He noted the appellant's

admission in his draft factum on the appeal – and reiterated in his responding affidavit on the motion – that his "best position" on appeal was that he would be required to pay the respondent $1,874,400 for the purchase of her interest in the company. Thus, by his own admission, the appellant would not risk any loss because he acknowledged that he must pay that amount to the respondent to buy her shares.

[9] In terms of the merits, the chambers judge found the appeal did not appear to be "particularly strong" because most of the grounds took issue with findings of fact, making it less likely to succeed.

Analysis

[10] The chambers judge exercised his discretion under r. 63.01(5), which provides that the judge may lift the automatic stay pending appeal "on such terms as are just". Given the breadth of discretion conferred on the chambers judge by r. 63.01(5), the reviewing panel must accord his order a high degree of deference: it may interfere with it only if the chambers judge failed to identify the applicable principles, erred in principle, or reached an unreasonable result: *Hillmount Capital Inc. v. Pizale*, 2021 ONCA 364, 462 D.L.R. (4th) 228, at para. 18.

[11] There is no question that the chambers judge identified the applicable legal principles. The appellant's complaint is with the chambers judge's finding that the respondent had demonstrated financial hardship. He argues here, as he did below,

that the respondent provided no evidence of financial hardship. In support of this argument, he points to the absence of evidence on the respondent's current income, her assets, her ability to borrow, her expenses, or whether she was in financial difficulty.

[12] I see no error in principle in the chambers judge's approach to the matter of financial hardship nor do I see that he reached an unreasonable result.

[13] Contrary to the appellant's submissions, this is not akin to the situation in *Health Genetic Center Corp. (Health Genetic Center) v. New Scientist Magazine*, 2019 ONCA 576, 49 C.P.C. (8th) 39, where there was no evidence of financial hardship in any of the affidavits filed. On this matter, I point to the chambers judge's recitation of the respondent's evidence of financial hardship. In her affidavit dated November 8, 2022, the respondent sets out her unchallenged evidence that: she was dismissed from her job with the parties' company on March 1, 2020; she had difficulties finding new employment in the COVID-19 pandemic; and, she had no employment income for over two years.

[14] The trial judge made similar findings of financial hardship. She wrote the following at paras. 16 and 61 of her reasons for decision:

> On or about March 2, 2020 [the appellant] terminated [the respondent's] employment with Marine Magnetics without notice. There is a separate legal proceeding ongoing related to [the respondent's] termination.

> In all the circumstances I would still exercise my discretion and award an equitable remedy. There are complex family dynamics at play here. In fact, the evidence was that there are still ongoing acrimonious family law proceedings related to the children. [The appellant] led [the respondent] down the garden path regarding her continued equal treatment from the family business. Then, he suddenly pulled the rug out from under her. [The respondent] panicked. By firing her, [the appellant] had cut off her only source of employment income. All of [the respondent's] relevant work experience had been gained in a company whose president was now claiming that she was fired for cause. [The appellant] also refused to authorize dividends from the company, without explanation, and [the respondent] had no other source of income. [Emphasis added.]

[15] The chambers judge referred to the "demonstrable and unusual hardship" test in *SFC Litigation Trust v. Chan,* 2018 ONCA 710, 66 C.B.R. (6th) 239, when he assessed the respondent's financial need. However, in my view, the principles in *Digiammatteo v. Leblanc* (1989), 71 O.R. (2d) 130 (C.A.), are more directly on point.

[16] In *Digiammatteo*, there was no appeal as to liability. As a result, in deciding whether to lift the stay, Finlayson J.A. said the "only valid question" was how much money should be released. He observed that it was "most unjust" that the moving party had received virtually no compensation when, by the time of trial at least, it was accepted that he was not at fault. Justice Finlayson then considered a "best case scenario" for the appellants and lifted the stay to that extent.

[17] Just as was the case in *Digiammatteo*, in the underlying appeal, the appellant does not contest liability. He acknowledges that he must pay the respondent for the transfer of her shares in the company to him. The contest is about how much he must pay her. In light of that, it would be most unjust if the respondent were to receive nothing by way of compensation until the appeal process is complete. In these circumstances, the only question for the chambers judge was to quantify the amount by which the stay should be lifted. He used the appellant's "best case" figure to quantify that amount. While the chambers judge did not discount the appellant's best case figure to allow for possible costs awards in his favour, I do not view that as an error in principle nor does it render the chambers judge's order unreasonable.

Disposition

[18] Accordingly, I would dismiss the Motion with costs to the respondent fixed at $7,500, all inclusive. The chambers judge reserved costs of the Motion to the panel hearing the appeal. I would leave that order undisturbed.

Released: April 27, 2023 "K.F."

"E.E. Gillese J.A."
"I agree. K. Feldman J.A."
"I agree. Grant Huscroft J.A."