

COURT OF APPEAL FOR ONTARIO

CITATION: Lahey v. Lahey, 2024 ONCA 307

DATE: 20240422

DOCKET: COA-24-OM-0112

Lauwers J.A. (Motions Judge)

BETWEEN

Kenneth Lahey and Margaret Lahey

Applicants
(Responding Parties)

and

Frederick Lahey and Kayla Harding

Respondents
(Moving parties)

Frederick Lahey and Kayla (Harding) Lahey, acting in person

Cynthia Rudavsky, for the responding parties

Heard: April 22, 2024

ENDORSEMENT

[1] The moving parties seek an extension of time for filing an appeal and a stay of the order under appeal.

[2] This case involves a residential property owned by Kenneth Lahey and Margaret Lahey, the responding parties to this motion. The factual underpinning of the events leading to this motion are set out in the affidavit of Kenneth Lahey dated March 13, 2024, in which he states:

We had permitted our son, Frederick Lahey, one of the Appellants/Respondents, to occupy the property on the condition that he would cover all of the carrying costs of the property. It was agreed that he would maintain the property, pay all the utilities associated with his occupancy of the property, and to pay the amount of Six Hundred and Fifty (\$650.00) dollars per month to cover our mortgage, fire insurance and property taxes on the property. These payments were supposed to be made by way of direct deposit into [a] Bank of Montreal account... in my name and my wife's name jointly.

[3] The complete factual background, the procedural history, and the squalid conditions of the property are set out in the lengthy endorsement written by Cook J. dated April 26, 2023. Because the moving parties had failed to comply with preceding court orders, Cook J. struck out their pleadings and required the application "to be heard on a default and uncontested basis."

[4] The application came before Rady J., who gave brief reasons:

The applicants seek judgment and a writ of possession respecting a property owned by them and occupied by their son and his partner. The facts and history of this lawsuit are comprehensively reviewed by Justice Cook in her endorsement of September 11, 2023. The respondents attended today but did not participate. It is clear to me that the applicants have gone to extraordinary lengths to assist the respondents and resorted to litigation when all other options had been exhausted. The respondents have failed to abide by court orders including that of Justice Grace directing them to pay occupation rent while the action was outstanding.

I am satisfied that the applicants are entitled to the judgment they seek and a writ of possession. They have incurred significant legal expenses but have very

reasonably asked for only \$10,000.00. Judgment signed.
Writ of possession to issue.

[5] The moving parties seek to extend the time within which they might appeal the judgment of Rady J. They seek a stay of her decision, although the writ of possession was executed and the responding parties are now in possession of the property.

[6] The test for an extension of time within which an appeal may be brought was succinctly stated by Weiler J.A. in *Paulsson v. University of Illinois*, 2010 ONCA 21, at para. 2:

The factors a court should consider in deciding whether to grant this type of motion are well-known. They are: whether the applicant had an intention to appeal within the time for bringing an appeal; the length of the delay, and any explanation for the delay; any prejudice to the respondent caused by the delay; and the justice of the case. This last factor is most important and requires a consideration of the merits of the appeal.

See also *Kefeli v. Centennial College of Applied Arts and Technology* (2002), 23 C.P.C. (5th) 35, per Simmons J.A., at para. 14.

[7] Frederick Lahey's affidavit explains that the delay is the result of an error in applying for leave to the Divisional Court. There is no real doubt that the moving parties formed the immediate intention to appeal but were confused about how to do so. The length of delay was brief, and there is no particular prejudice to the responding parties that flows from the brief delay.

[8] The last factor, the merits and justice of the case, is the most important and can be determinative: *1250264 Ontario Inc. v. Pet Valu Canada Inc.*, 2015 ONCA 5, at para. 7; *Overtveld v. Overtveld*, 2021 ONCA 930, at para. 9.

[9] As to the merits of the proposed appeal, Frederick Lahey states only this: “suggest that the order allows an error in law to be enabled.” I interpret this to be saying that the decision of Rady J. contained an error of law. Neither he nor his partner specified what the error was in their oral submissions. I am unable to discern any merit in the proposed appeal. The record shows that the moving parties have been treated with due care by every judicial officer they have encountered.

[10] This court will not typically hear appeals from uncontested proceedings, although it has discretion to do so: *Matos v. Driesman*, 2024 ONCA 271, at para. 10, *Lamothe v. Ellis*, 2022 ONCA 789, 79 R.F.L. (8th) 8, at para. 3. But the moving parties have not brought my attention to any exceptional circumstances that would justify an exercise of my discretion in their favour. Indeed, had the appeal been timely, the responding parties would have been able to bring a motion quashing the appeal on this very basis.

[11] The motion for an extension of time for filing an appeal and a stay of the order under appeal is dismissed.

“Lauwers J.A.”