

COURT OF APPEAL FOR ONTARIO

CITATION: GlycoBioSciences Inc. (Glyco) v. Industria Farmaceutica Andromaco,  
S.A., de C.V. (Andromaco), 2024 ONCA 481

DATE: 20240614

DOCKET: M55090 (COA-24-CV-0270) & M55167 (COA-24-CV-0417)

Huscroft J.A. (Motions Judge)

DOCKET: M55090 (COA-24-CV-0270)

BETWEEN

GlycoBioSciences Inc. (“Glyco”)

Plaintiff (Appellant/Moving Party)

and

Industria Farmaceutica Andromaco, S.A., de C.V. (“Andromaco”) and Montebello  
Packaging (“Montebello”) and Nadro S.A.P.I. de C.V. (“Nadro”)

Defendant (Respondent/Responding Party)

DOCKET: M55167 (COA-24-CV-0417)

AND BETWEEN

GlycoBioSciences Inc.

Plaintiff (Appellant/Moving Party)

and

MAGNA Pharmaceuticals, Inc.

Defendant (Respondent/Responding Party)

Kevin Drizen, for the moving party

Andrew Moeser and Dan Malone, for the respondent

Heard: June 11, 2024 by video conference

## ENDORSEMENT

### **Background**

[1] Mr. Drizen brings a motion seeking leave to represent the corporate appellant, GlycoBioSciences Inc., as a non-lawyer pursuant to r. 15.01(2) of the *Rules of Civil Procedure*, R.R.O. 1990., Reg. 194. The responding party brings a motion against the corporate appellant for security for costs.

[2] In response to the motion for security for costs, Mr. Drizen sought to bring a motion for a sealing order and to proceed *ex parte*. He was advised by the court that this motion was not timely and could not proceed. He then sought to adjourn all of the motions to a later date. The respondents opposed the adjournment request.

[3] I declined the request to adjourn, as it was possible to deal with the motions without prejudice to Mr. Drizen. I dealt with his request for leave to represent GlycoBioSciences Inc. first, as it would not be possible to hear the responding party's motion for security for costs unless he was entitled to represent the corporation.

[4] Following the hearing, I informed the parties that the r. 15.01(2) representation motion was dismissed with reasons to follow. These are the reasons.

## The Rule

[5] Rule 15.01(2) provides as follows:

A party to a proceeding that is a corporation shall be represented by a lawyer, except with leave of the court.

[6] In other words, the default position is that corporations must be represented in legal proceedings by a lawyer. The court may permit otherwise, but the granting of leave is exceptional. Leave is discretionary but cannot be granted in a manner that normalizes what the rule otherwise prohibits.

[7] The rationale for the rule requiring representation by a lawyer is plain. A non-lawyer who is closely tied to the corporation granted leave under r. 15.01(2) is akin to a self-represented party, but the separate legal personhood of the corporation means, in effect, that the non-lawyer is providing legal services to another person, contrary to s. 26.1(1) of the *Law Society Act*, R.S.O. 1990, c. L.8. Moreover, non-lawyers are not bound by the *Rules of Professional Conduct*, nor are they subject to the personal financial consequences associated with cost orders that self-represented litigants face: *Leisure Farm Construction Limited v. Dalew Farms Inc. et.al.*, 2021 ONSC 105 at paras. 12-15. Permitting a non-lawyer to act also risks creating an undue burden on the respondents and the court. These considerations must be balanced with any concerns that may arise about access to justice, as discussed below.

## **Discussion**

[8] There is little authority concerning r. 15.01(2) from this court. It appears that individuals have sometimes been permitted to act because their participation was not contested, or in some cases the rule was overlooked. I do not intend to canvas the caselaw. It suffices to say that the decision to permit a non-lawyer to represent a corporation is a discretionary decision that must be made having regard to all of the circumstances in a particular case.

[9] I begin with two threshold matters. First, Mr. Drizen's history of acting for the corporation, even in this court, is not determinative of whether he should be permitted to act on this or any other matter in future. Mr. Drizen seems to have assumed that he is entitled to act because he has acted for the corporation on other occasions, typically in bringing actions in the corporation's name. Indeed, he appears to have acted as a sort of in-house counsel for the corporation. But he has no entitlement to do so. The agreement of the parties or the failure of a party to object neither requires nor justifies the decision to grant permission to a non-lawyer to represent a corporation.

[10] Second, a corporation's authorization of an individual to represent it is a necessary condition for an order under r. 15.01(2) but it is not sufficient. Thus, the resolution of the directors of GlycoBioSciences Inc. authorizing Mr. Drizen to act

for the corporation is not determinative, nor is the nature of his position within the corporation.

[11] Mr. Drizen submits that his representation is necessary to ensure that the corporation has access to justice. He says that the corporation used to retain lawyers but can no longer afford to do so, and that he has acted for the corporation since 2017. At the same time, however, Mr. Drizen stated that the company had obtained several million dollars in settlement payments and millions of dollars in revenue. He says that he is the directing mind of the corporation – effectively its alter ego – but adds that the corporation has four directors and several shareholders. When pressed, he said there were many more shareholders, perhaps 30.

[12] I am left in some doubt as to the nature of this corporation and its financial affairs. The respondents say that GlycoBioSciences Inc. has commenced numerous proceedings in the Ontario Superior Court against foreign entities with no Canadian operations, proceedings designed to pressure them into settling for an amount they would otherwise be required to pay to defend the claims. Similar claims have been made about GlycoBioSciences Inc. in other cases. I need not resolve the matter here. The burden is on Mr. Drizen to establish that he should be permitted to represent the corporation on this appeal and he has failed to meet that burden. This is not a case in which access to justice supports the granting of his motion.

[13] There are additional concerns. Despite Mr. Drizen's confidence in his abilities, he is not a lawyer and is not entitled to practice law. His performance in recent litigation, as well as on this motion, demonstrate some of the problems.

[14] For example, his recent application for judicial review to challenge a costs order was dismissed as an abuse of process: *GlycoBioSciences Inc. v. Herrero and Associates*, 2023 ONSC 4143. In recent litigation in this court, *GlycoBioSciences Inc. v. Herrero and Associates*, 2023 ONCA 331, substantial indemnity costs were ordered to be paid by the corporation, among other things because of Mr. Drizen's "reckless allegations" impugning the integrity of opposing counsel and the motion judge and "an improperly voluminous record". The respondents note that the corporation has not paid the outstanding costs – \$50,000 from the jurisdiction motion and \$26,000 from the appeal. For his part, Mr. Drizen acknowledges the costs have not been paid but says that is because counsel for Herrero has not sought to collect them. I do not know what the true situation is.

[15] Mr. Drizen's actions on these motions are also problematic. It is not clear why a sealing order was necessary in order to respond to the security for costs motion, but Mr. Drizen did not bring his motion for a sealing order in a timely manner in any event. When faced with this difficulty he did not accept the offer to put a temporary seal on his material pending the outcome of his sealing order request and instead sought to bring his motion *ex parte*. When this was not permitted he sought to adjourn the motions.

[16] In summary, Mr. Drizen has not met his burden of establishing that he should be permitted to represent the corporation.

[17] Accordingly, the motion is dismissed. Mr. Drizen may not act for the corporation on this appeal.

**Disposition**

[18] The motion is dismissed. The respondents are entitled to costs in the amount of \$6,000 each, all inclusive.

“Grant Huscroft J.A.”