

COURT OF APPEAL FOR ONTARIO

CITATION: Carleton Condominium Corporation No. 476 v. Wong, 2020 ONCA
244

DATE: 20200403
DOCKET: C67296

Paciocco J.A. (In Chambers)

BETWEEN

Carleton Condominium Corporation No. 476

Plaintiff (Respondent)

and

Newton Wong

Defendant (Appellant)

Newton Wong, acting in person

Cheryll Wood, for the respondent

Heard by teleconference: April 2, 2020

REASONS FOR DECISION

[1] The appeal in this matter is scheduled to be heard on April 9, 2020. Since oral in-person appeal hearings were suspended for the week of April 6, 2020 as a result of the Covid-19 health crisis, the parties were canvassed as to whether they would agree to having the appeal heard without an in-person hearing, or to have the matter adjourned to a date in September or early October. The parties could not agree. The appellant seeks an adjournment until September or early October. The respondent requests that the appeal proceed in writing, with an

opportunity for the parties to respond to panel questions either by teleconference or videoconference on April 9, 2020.

[2] I conducted a teleconference hearing on April 2, 2020, to rule on the appellant's adjournment request and to decide how the appeal would proceed. It is in the interests of justice to have the appeal proceed in writing based on the materials filed. The parties will have an opportunity to respond, by teleconference, to any questions the panel may have, on the date set for the appeal, April 9, 2020.

[3] By its nature, this appeal can be fairly adjudicated in writing. Although the respondent is self-represented, he is a lawyer. The written materials reflect that they were professionally prepared. The appellant's materials present the issues with clarity and the appellant's position is well developed. The respondent's materials are responsive.

[4] Moreover, the issues presented are, by their nature, capable of being adequately addressed in writing. The statutory interpretation questions raise narrow technical considerations that have been well delineated in the written materials. The sufficiency of the notice of lien can be easily calculated once the statutory arguments are resolved. The alleged misapprehension of evidence can be decided on the face of the record. The basis for the challenge to the limitation period finding, and the response, are also set out clearly. Again, they can be

determined on the record with the assistance of the written argument made. The same is true of the vicarious liability issues raised in the counterclaim.

[5] The appellant did not take the position during the teleconference that the appeal could not be resolved on the written record. He expressed a preference for taking the panel through the arguments during an in-court oral hearing at a future date. That preference is understandable, but it is not in the interests of justice.

[6] With respect to the request to adjourn the matter to a future date, I accept the position of the respondent that the delay of the appeal would be prejudicial. It is not disputed that the appellant has withheld a significant amount of condominium fees pending the appeal, including debts accrued that are not linked to the debt that led the respondent to impose the lien that the appellant is now challenging. It is in the interests of justice to determine without further delay whether the shortfall that these withheld payments have generated should continue to be borne by other members of the condominium corporation.

[7] Moreover, it is not in the interests of justice to overburden the court by adjourning matters that can be dealt with fairly, as scheduled. The backlog that will be created by cases that must be adjourned to protect the public and ensure fair hearings will be imposing and it should not be unnecessarily aggravated.

[8] I have decided to order that the appeal proceed in writing rather than by remote oral hearing to ameliorate any litigation advantage that the respondents might have if a full, remote oral hearing is ordered. Although the appellant has not requested that the appeal be determined in writing, the appellant has taken the position that he cannot prepare adequately for an oral hearing because his materials are at his law firm and contain post-its and other endorsements that he would rely upon. He has made the personal choice, that I respect, that he will not risk the health of his employees by sending them into the office to assemble and retrieve this material, and he himself is not capable of doing so without help. He is uncomfortable working with electronic documents because he is accustomed to working with paper and is only slowly building up the technical capacity for his law firm employees to work remotely. In these circumstances, it would give the respondent a litigation advantage to conduct a full oral hearing, even by teleconference, since the respondent is not affected by similar limitations.

[9] Similarly, that litigation advantage would arise for similar reasons if the parties were now invited to supplement their existing written submissions with further written arguments. Moreover, the parties did not suggest that further written arguments are required.

[10] I appreciate that the impediments experienced by the appellant that I have described could pose challenges to the appellant's facility to field any questions the panel may have, but these challenges can adequately be accommodated by

accepting the respondent's undertaking to furnish the appellant forthwith with electronic copies of all filed documents, which the appellant acknowledges he is capable of receiving electronically. I would also direct that the respondent file with the court the electronic copies of all filed documents sent to the appellant by sending them by email to coa.e-file@ontario.ca. Should any questions be posed by the panel that disadvantage the appellant given that he will not have his own annotated file, this can be addressed when those questions are posed. If necessary, the panel could invite a written response within a reasonable deadline.

[11] The appellant's adjournment request is denied. The appeal will proceed in writing, on condition that the respondent furnish to the appellant and file with the court, electronic copies of all documentation that has been filed with the court in connection with this appeal, by Monday, April 6 at 12:00 p.m. Should the respondent be unable or unwilling to do so, I will entertain a further request for an adjournment.

[12] Should any panel members determine that questions are necessary, those questions will be posed during a teleconference to be held at 2:00 p.m. on April 9, 2020. Arrangements will be made to schedule that teleconference and contact information will be sent to the parties. Should the panel determine that there are no questions required, the parties will be notified.

“David M. Paciocco J.A.”