

Ontario Judgments

Ontario Superior Court of Justice

Toronto, Ontario

F.L. Myers J.

Heard: March 27, 2018.

Oral judgment: March 27, 2018.

Court File No. CV-16-557186

[2018] O.J. No. 3009

Between St. Leonard's Place et al., Applicants, and Brown et al., Respondents

(10 paras.)

Counsel

R. Segal, M. Ma, I. Dick, Counsel for the Applicants.

S. Carter, R. Gascho, J. Macdonald, M. Kotsopoulos, J. Solomon, E. Stock, J. Irving, J. Kuner, M. Alter, M. Protich, Counsel for Respondents.

V. Sinclair, In person.

M. Walsh, In person.

RULING ON APPLICATION

F.L. MYERS J. (orally)

1 So on Ms. Protich's, respondent's, application record I've endorsed, "Application dismissed as moot. The respondents succeeded but the merits were not determined. The respondents are entitled to costs from the applicants in this proceeding fixed at 82,000 all inclusive." I will come back to it. Don't worry, Mr. Macdonald.

2 Then on the application record in the main application: "The respondent succeeded in full. Application dismissed for oral reasons dictated today."

3 The respondent Brown is entitled to his costs on a substantial indemnity basis. The applicants made very serious allegations against him that were unsubstantiated. They besmirched his good name after 35 years of service to their organization. Costs are fixed at \$99,300 all in, payable by the applicants jointly and severally.

4 The applicants asked that costs stop at January 31, 2018, when they made an offer to settle based on the facts learned on cross-examination. The offer was not beaten. It gave Mr. Brown far less than he was entitled to. It did

not fully compensate the other respondents for allegations made against them for no reason. I do not see a basis in Rule 49 to consider this offer.

5 The applicants remind the Court that SLPP is a charity. It did not behave very charitably in suing. Now it wants to force its former directors and Executive Director to contribute their legals without even getting a receipt. SLPP should have a good look at its corporate purposes.

6 The respondents represented by Mr. Macdonald are entitled to full indemnity as between - as former directors and due to the serious allegations made against them without cause. I do not agree that the charity had no choice. No one is required to sue and allege illegal conduct without - with no evidence.

7 When the Board saw that it was suffering high costs, there was no duty to sue with no basis. Mr. McIntosh's refusal to particularize the breaches of fiduciary duty and breaches of trust was utterly offensive. You do not sue just because something did not work as planned, at least not for dishonesty.

8 In my view, the applicant's inappropriate claims set the wheels in motion that led to Mr. Macdonald's clients to claim against the current Board members who had also taken a step that could be claimed to have at least recognized the validity of the IPP. The claim over was not strong but it was understandable back blow from the applicant's actions.

9 As the current Board is in all likelihood indemnified under the bylaws now in place to leave the applicants in the claim over without recourse is to have them paying SLPP's costs. Therefore, the applicants are jointly and severally liable to pay the costs of Mr. Macdonald's clients on a substantial indemnity basis for both applications in the amount of \$110,000 all in and to indemnify them for the costs they are required to pay to the current Board of \$82,000 all in.

10 Mr. Sinclair is entitled to indemnity for disbursements and the time that would have been spent by a lawyer. I found his submissions compelling and helpful in resolving the matter. The applicants are jointly and severally liable to pay Mr. Sinclair his costs fixed at \$500. Thank you all very much.

...END OF EXCERPT OF PROCEEDINGS

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Court File No: CV-16-557186

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE)	TUESDAY, THE 27 th
)	
MR. JUSTICE MYERS)	DAY OF MARCH, 2018

BETWEEN:

ST. LEONARD'S PLACE, PEEL and CHRISTOPHER MCINTOSH

Applicants

- and -

RICHARD BROWN, BARRY TURNBULL, VICTOR SINCLAIR, RAY SCANLAN,
MAGGIE MCCALLION, JOHN LOMAX, AIMEE ADAMS, GRANT KERR, JIM
STEPHENSON, MICHAEL WALSH, TOM KEYES, JOHN MULLEN, TOM
TREVELYAN, ELIZA JUSZCZAK, ESTELLE WIELER, BRUCE GASKIN,
JEFF BANTON, JOANNE ROBERTSON, CRAIG ELLIS,
GARNETT MANNING, and JOHN SANDERSON, MARK MCNEIL,
ELAYNE MCDERMID, FRAN BAINES and IRENE EVANS

Respondents

ORDER

THIS APPLICATION was heard on March 26, 2018 and March 27, 2018 at the Court House at 330 University Avenue at Toronto.

ON READING the Applicants' Application Records; Factum, Brief of Authorities and the Respondents' Application Records; Facta and Books of Authorities and on reading the transcripts of the cross-examinations of the Applicants and the Respondents and on hearing submissions of the lawyers for the Applicants and Respondents and from Victor Sinclair and Michael Walsh;

1. **THIS COURT ORDERS** that the application is dismissed.
2. **THIS COURT FURTHER ORDERS** that the Applicants, jointly and severally, shall pay costs to the Respondent, Richard Brown, fixed in the amount of \$99,300.00.
3. **THIS COURT FURTHER ORDERS** that the Applicants, jointly and severally, shall pay costs to the Respondents, Barry Turnbull, Ray Scanlan, John Lomax, Jim Stephenson, Garnett Manning and John Sanderson, fixed in the amount of \$110,000.00.
4. **THIS COURT FURTHER ORDERS** that the Applicants, jointly and severally, shall indemnify the Respondents, Barry Turnbull, Ray Scanlan, John Lomax, Jim Stephenson, for the costs of \$82,000.00 that these Respondents are required to pay to the Respondents to the application in Court File No. CV-17-571757.
5. **THIS COURT FURTHER ORDERS** that the Applicants, jointly and severally, shall pay costs to the Respondent, Victor Sinclair, fixed in the amount of \$500.00.