

COURT OF APPEAL FOR ONTARIO

CITATION: Rosemont Management Inc. v. Cityzien Properties Limited, 2025
ONCA 198
DATE: 20250311
DOCKET: COA-24-CV-0739

MacPherson, Huscroft and Dawe JJ.A.

BETWEEN

Rosemont Management Inc. and McCaul Leasehold Management Limited

Applicants (Appellants)

and

Cityzien Properties Limited and John Faraci*

Respondents (Respondent*)

Brett Hughes, for the appellants

Gregory Weedon, for the respondent

Heard: March 10, 2025

On appeal from the order of Justice Paul M. Perell of the Superior Court of Justice, dated May 31, 2024, with reasons reported at 2024 ONSC 3120.

REASONS FOR DECISION

[1] The appellants Rosemont Management Inc. and McCaul Leasehold Management Limited are related corporations. For convenience, we will refer to them collectively as “Rosemont”. Rosemont appeals from an order staying its application against the respondent John Faraci as an abuse of process.

[2] We dismissed the appeal after the hearing, with reasons to follow. These are those reasons.

[3] Rosemont had contracted to sell its leasehold interest in an apartment building on McCaul Street in Toronto to Cityzien Properties Limited (“Cityzien”). Mr. Faraci was Cityzien’s lawyer. As part of an amendment to the sale agreement, Cityzien became the building’s property manager for a two-year period leading up to the closing date. This authorized Cityzien to rent out units in the apartment building. It used this power to give Mr. Faraci a 15-year lease over an apartment unit for the nominal rent of \$1 per year, as a means of repaying a debt that Cityzien owed Mr. Faraci for his legal fees.

[4] The transaction between Rosemont and Cityzien did not close, and each commenced an application against the other. Rosemont also named Mr. Faraci as a respondent in its application, seeking, among other things, an order invalidating his 15-year apartment lease.

[5] In late July 2021, Cityzien’s president began negotiating a settlement with Rosemont. The settlement agreement was finalized on August 5, 2021. As part of the agreement, Cityzien agreed to help Rosemont pursue its claim against Mr. Faraci. Cityzien’s president also expressed an interest in suing Mr. Faraci.

[6] On the same day that Rosemont and Cityzien finalized their settlement agreement, Rosemont’s counsel cross-examined Mr. Faraci in connection with

Rosemont's application. However, Mr. Faraci was only informed twelve days later, on August 17, 2021, that Rosemont and Cityzien had settled their claims against each other and were now allied against him.

[7] In April 2024, the motion judge heard two motions: (1) a motion by Rosemont to enforce its settlement with Cityzien, which Cityzien now opposed; and (2) a motion by Mr. Faraci to have Rosemont's application against him stayed as an abuse of process. The motion judge ruled against Rosemont on both motions, refusing to enforce its settlement with Cityzien, and staying Rosemont's application against Mr. Faraci. Rosemont only appeals against the second of these orders.

[8] The application judge stayed Rosemont's application against Mr. Faraci by applying the well-settled rule "that settlement agreements reached between some parties, but not others, need to be immediately disclosed to non-settling parties if they entirely change the litigation landscape": *Skymark Finance Corporation v. Ontario*, 2023 ONCA 234, 166 O.R. (3d) 131, at para. 46.

[9] Rosemont's first argument is that the motion judge erred by finding that its settlement with Cityzien "fundamentally changed" the litigation landscape from Mr. Faraci's perspective "by July 30, 2021", even though the settlement was not finalized until August 5, 2021. According to Rosemont, the motion judge either erroneously found that it was required to disclose its settlement negotiations with Cityzien to Mr. Faraci even before a final agreement had been reached, when the

negotiations were still cloaked by settlement privilege, or else erred by finding as fact that Rosemont and Cityzien had reached a settlement agreement on July 30, 2021, when their negotiations actually continued until August 5, 2021.

[10] We are not persuaded that the motion judge made either of these errors. His reasons must be read as a whole. Notwithstanding his comments that the litigation landscape had fundamentally changed on July 30, 2021, and his further suggestion that it was an abuse of process for Rosemont to cross-examine Mr. Faraci on August 5, 2021, when finalization of the settlement agreement with Cityzien “was inevitable”, he made it clear later in his reasons that he viewed Rosemont’s obligation to disclose its settlement with Cityzien to Mr. Faraci as only having crystallized once the settlement agreement was actually signed on August 5, 2021. The motion judge explained:

The settlement agreement was signed by Rosemont and Cityzien’s representatives on August 5, 2021. Notice of the settlement agreement was not provided to Mr. Faraci until the delivery of the Confirmation Notice Form on August 17, 2021.

In the circumstances of the immediate case, Rosemont did not give Mr. Faraci immediate notice of a settlement agreement that fundamentally altered the litigation landscape. Not only were the general principles of the abuse of process doctrine violated, the particular rule about settlement agreements was violated.

In the circumstances of the immediate case, immediate notice of the settlement was required immediately on August 5, 2021, not two weeks later. [Emphasis added.]

[11] In short, the motion judge made it clear that he was staying Rosemont's action because of its delay in disclosing the settlement after August 5, 2021, and not because he found that Rosemont had any obligation to disclose the settlement even before it was finalized on August 5, 2021.

[12] Rosemont's second argument is that the motion judge erred by concluding that its disclosure of the settlement on August 17, 2021, was not "immediate". According to Rosemont, the delay of less than two weeks between August 5 and August 17 was "immediate in the circumstances of this case", particularly since cross-examination of Mr. Faraci was completed before the settlement agreement was signed on August 5.

[13] The question of whether a settling party's disclosure of the settlement is "immediate" is "fact-dependent": *Aecon Buildings v. Stephenson Engineering Ltd.*, 2011 SCC 33, [2011] 2 S.C.R. 560, at para. 5; *CHU de Québec-Université Laval v. Tree of Knowledge International Corp.*, 2022 ONCA 467, 162 O.R. (3d) 514, at para. 66. This court has previously rejected the argument that a three-week delay in disclosing a settlement agreement "was negligible and ought not to be caught by the immediate disclosure rule", noting that "[t]he standard is 'immediate'; it is not 'eventually' or 'when it is convenient'": *Tallman Truck Centre Limited v. K.S.P. Holdings Inc.*, 2022 ONCA 66, 466 D.L.R. (4th) 324, at para. 26, leave to appeal refused, [2022] S.C.C.A. No. 170.

[14] The motion judge was entitled to find as he did that Rosemont’s disclosure of its settlement with Cityzien to Mr. Faraci was not “immediate”. Indeed, he found as fact that Rosemont’s counsel “was not being candid” with Mr. Faraci’s counsel when he suggested to him on August 12, 2021, that Rosemont did not know what the status of the cross-examination of Cityzien’s president was, and that he had not agreed to the cross-examination being postponed. In reality, the cross-examination had been cancelled because of the settlement.

[15] We are not persuaded that the motion judge made any palpable and overriding errors that would permit us to interfere with his fact-dependent conclusion that the settlement was not disclosed to Mr. Faraci “immediately”.

[16] Rosemont’s final argument is that since the motion judge found that its settlement with Cityzien was unenforceable, the settlement was “therefore incapable of entirely changing the litigation landscape”. We disagree.

[17] The settlement disclosure rule is designed to give settling parties the strongest possible incentive to disclose settlements to other affected parties. That is why the extreme remedy of a stay of proceedings must be granted automatically whenever the rule is breached: see *Poirier v. Logan*, 2022 ONCA 350, at paras. 41-42, leave to appeal refused, [2022] S.C.C.A. No. 255; *Aecon Buildings v. Stephenson Engineering Limited*, 2010 ONCA 898, 328 D.L.R. (4th) 488, at para. 16, leave to appeal refused, [2011] S.C.C.A. No. 84.

[18] In this case, Rosemont believed in August 2021 that it had entered into what the motion judge found was “from its perspective ... a very provident settlement with Cityzien”. The motion judge also found that the settlement was “grossly improvident” from Cityzien’s perspective, and that Rosemont ought to have known that Cityzien’s president did not have the authority to enter into the agreement without the unanimous consent of its shareholders. However, while Rosemont knew on August 5, 2021, that one of Cityzien’s minority shareholders was opposed to the settlement agreement, it did not know that Cityzien’s president would be unable to persuade this shareholder to change his mind. Rosemont proceeded to act on the basis that the settlement agreement with Cityzien was valid and binding.

[19] In these circumstances, it would be contrary to the policy behind the settlement disclosure rule to shield Rosemont from the consequences of its failure to make proper timely disclosure of the settlement to Mr. Faraci, on the grounds that its subsequent efforts to enforce the settlement against Cityzien years later were unsuccessful.

[20] The appeal is accordingly dismissed. The parties have agreed that Mr. Faraci, as the successful party, should receive his costs of the appeal fixed at \$10,000 inclusive of disbursements and HST.

“J.C. MacPherson J.A.”
“Grant Huscroft J.A.”
J. Dawe J.A.”