CITATION: Grovum v. Kouznetsov, 2025 ONSC 3899
DIVISIONAL COURT FILE NO.: DC-24-00000733-0000
DATE: 20250630

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

Backhouse, O'Brien, and Kaufman JJ

BETWEEN:	
DWIGHT GROVUM AND GROVUM EQUITIES INC.	*Young Park,* Counsel for the Respondents
Respondents	
– and –	
ANDREI KOUZNETSOV, KOUZNETSOV EQUITIES INC. AND AKINVEST-XPT INC.	*Arkadi Bouchelev,* Counsel for the Appellants
Appellants	*Fred Tayar*, Counsel for the Court Appointed Receiver
	HEARD in Toronto: on April 22, 2025

A. KAUFMAN J.

REASONS FOR JUDGMENT

[1] Andrei Kouznetsov, Kouznetsov Equities Inc., and Akinvest-XPT Inc. (the "appellants") appeal the order of Justice M. Koehnen (the "application judge") dated October 22, 2024. They contend that the application judge erred by making a final order on contested issues during a case conference and that they were denied procedural fairness. They also seek leave to file fresh evidence on appeal.

[2] For the reasons below, this appeal is allowed in part. The respondents concede that a portion of the payment the application judge ordered the appellants to pay was calculated in error. The respondents are otherwise successful on the appeal.

Background

[3] Dwight Grovum and Andrei Kouznetsov, through their holding companies, were shareholders of Akinvest XPT Inc. ("Akinvest"), a company that bought cars at auction for resale abroad. Mr. Grovum held a minority stake.

[4] In September 2008, the parties sold Akinvest to Manheim Auctions Inc, a U.S. corporation. The parties were to receive payment in two tranches: a first $3,365,316 USD payment and a second $10,000,000 USD payment. The first payment was made as agreed, but the second was received only after Akinvest and Manheim settled litigation in January 2015.

[5] In November 2016, the respondents brough an oppression remedy application under the *Business Corporations Act*,[1] alleging that Mr. Kouznetsov wrongfully removed the $10,000,000 USD settlement payment from Akinvest. The application judge, in an October 13, 2020 endorsement, found that Mr. Kouznetsov stripped the company of its cash, claimed unspecified debts exceeding Manheim's settlement payment, and produced apparently forged documents to support those debts.

[6] By the time of the application hearing, Mr. Kouznetsov had restored the $10,000,000 USD settlement funds to Akinvest's bank accounts, and the parties agreed to wind up the corporation. However, Akinvest faced tax liability for the settlement, which should have been paid in the year it was received. The application judge ordered that any penalties or interest on the tax liability be paid solely from Mr. Kouznetsov's share of the settlement, as he had caused the funds' disappearance and the resulting tax penalties and interest:

> 36. To the extent there are penalties or interest owing on the tax payable, interest and penalties should be payable exclusively from Andrei [Kouznetsov]'s share of the settlement because it was Andrei who caused the settlement funds to disappear, and Andrei who failed to cause taxes to be paid.

[7] The appellants did not appeal the application judge's October 13, 2020, judgment.

[8] In November 2020, a receiver was appointed to identify and settle Akinvest's debts and distribute its remaining assets rateably.

The request for a case conference

[9] A dispute arose over the portion of the $853,172 in interest and penalties on unpaid taxes from the "second tranche" payment attributable to the appellants.

[1] R.S.O. 1990 c B.16.

[10] A separate dispute concerned $288,073 in interest and penalties resulting from an accounting error in allocating capital losses to offset income taxes for the 2010 fiscal year. The parties agree this amount is unrelated to the second tranche tax liability. The respondents argue that the appellants should bear these costs due to their responsibility for the accounting error.

[11] On October 1, 2024, at the appellants' request, the receiver's counsel wrote to the Court seeking a case conference with the application judge for the purpose of "interpretation of his previous orders / endorsements."

[12] On October 2, 2024, the application judge scheduled a case conference for October 22, 2024, at 9:00 a.m. He directed each party to submit a case conference memorandum, limited to five pages plus necessary attachments, setting out "what they want and why they should get it". The application judge prescribed a 5-page conference memorandum limit "plus any necessary attachments". He specified that the memoranda should include all relevant information, as the conference would focus on the Court's questions rather than counsel's submissions.

[13] The parties and the receiver submitted memoranda before the case conference.

[14] In their memorandum, the appellants made the point that the tax liability related to the 2010 accounting error had "nothing to do with the second tranche" payment and that it was discovered when the receiver reviewed the corporations' previous tax filings. The appellants argued that this tax liability ought to be shared between the parties because the error was made by both directors.

[15] Regarding the penalties and interest related to taxes owing on the second tranche, the appellants argued that the receiver's "glacially slow pace" justified a reduction in their liability. They contended that their responsibility for interest and penalties should only extend up to November 10, 2020. The appellants argued that the receiver selected the accountant whose slow pace caused the delay, and that it would be unjust for them to be penalized for delays beyond their control. They requested that a hearing be scheduled to address the issues raised in their memorandum.

[16] In their memorandum, the respondents sought an order requiring the appellants to pay all tax penalties and interest on the second tranche payment. However, the respondents mistakenly linked the $288,073 tax penalties and interest (resulting from the 2010 accounting error) to the second tranche, which is incorrect.[2]

The order resulting from the case conference

[17] On October 22, 2024, the application judge issued an endorsement following the case conference. He noted that the respondents sought an order requiring the appellants to pay all penalties and interest on the second tranche settlement funds. He rejected the appellants' argument that their liability should be limited to penalties and interest accrued up to November 10, 2020,

[2] The respondents claimed that the $1,141,245 in tax penalties and interest relates to the second tranche payment. This amount comprises $853,172 attributable to the second tranche and $288,073 stemming from the 2010 accounting error.

due to the receiver's slow pace. Referencing his October 13, 2020, ruling, he reasoned that he had already determined that the appellants' conduct caused the issue, and held them liable for the resulting penalties and interest. He concluded that the appellants cannot complain about the time taken to rectify their wrongdoing:

> I can understand that the [appellants] may feel that it took the Receiver longer to correct the matter than it should have. If, however, a party has engaged in wrongdoing that requires time to correct, it does not lie in the mouth of the wrongdoer to complain that the party correcting the problem took too long. That risk should remain with the initial wrongdoer.

[18] The application judge noted that part of the delay stemmed from the receiver's efforts to negotiate a reduction in interest and penalties with the CRA, which would have benefited the appellants. He ordered the appellants to pay $1,141,245 in penalties and interest.

[19] The respondents concede that they erroneously attributed the $288,073 of penalties and interest to the second tranche payment. This amount, arising from an accounting error uncovered after the receiver's appointment, is unrelated to the second tranche and was not addressed in the application judge's October 13, 2020, endorsement. Therefore, to the extent that the application judge's order includes this amount, the appeal is allowed in part.

Motion to adduce fresh evidence

[20] The appellants seek to introduce the affidavit of Fazia Mohammed, a legal assistant in their counsel's office, in this appeal. The affidavit provides background information regarding the events that led to the request for the case conference, attaching relevant documents such as correspondence between the parties, the receiver's request for the conference, and the application judge's response. It also details interactions between the appellants' counsel and the application judge during the conference.

[21] The respondents do not oppose the motion, and both parties rely on exhibits to Ms. Mohammed's affidavit. This evidence clarifies how the October 22, 2024, hearing proceeded as a case conference and pertains to the appellants' arguments regarding procedural fairness.

[22] Fresh evidence may be admitted on appeal to address alleged breaches of procedural fairness.[3] I would allow the motion to admit the fresh evidence.

Issues

[23] The appellants raise two issues: first, whether the application judge had authority to issue the impugned order at a case conference; second, whether his decision was procedurally unfair.

[3] *Prince Edward County Field Naturalists v. Ostrander Point GP Inc.*, 2015 ONCA 269, at para 84.

1. Scope of judicial powers at a case conference.

[24] The appellants contend that Rules 50.13(5) and 50.13(6)[4] provide an exhaustive list of permissible orders at a case conference. They provide as follows:

> *Matters to be dealt with*
>
> 50.13 (5) At the case conference, the judge or associate judge may,
>
> (a) identify the issues and note those that are contested and those that are not;
> (b) explore methods to resolve the contested issues;
> (c) if possible, secure the parties' agreement on a specific schedule of events in the proceeding;
> (d) establish a timetable for the proceeding; and
> (e) review and, if necessary, amend an existing timetable.
>
> *Powers*
>
> 50.13 (6) At the case conference, the judge or associate judge may, if notice has been given and it is appropriate to do so or on consent of the parties,
>
> (a) make a procedural order;
> (b) convene a pre-trial conference;
> (c) give directions; and
> (d) in the case of a judge,
> (i) make an order for interlocutory relief, or
> (ii) convene a hearing.

[25] The appellants argue that the application judge's order, which holds them liable for penalties and interest on taxes resulting from their removal of the second tranche payment beyond November 10, 2020, constitutes a final order that exceeds the judge's authority at a case conference. They argue that a judge's powers at a case conference are limited to making procedural orders, giving directions, making orders for interlocutory relief, and convening a hearing.

[26] Rule 50.13 is not as restrictive as the appellants assert. In appropriate cases and on notice, judges and associate judges have authority to issue directions, which can include substantive orders, during case conferences to enhance efficiency, accessibility, and fairness in the justice system. This flexibility reduces delays and procedural burdens, tailors procedures to the case's needs, and prevents unnecessary formalities from hindering timely resolution. Such authority also

[4] R.R.O. 1990, Reg. 194.

supports pragmatic case management, upholds proportionality and efficiency, and aligns with Rule 1.04, which mandates that the *Rules of Civil Procedure* be liberally construed to secure just, most expeditious, and least expensive resolution of civil proceedings on their merits.

[27] The appellants cite *Edenshaw Toronto Developments v. Diamond Luxury Developments*,[5] where Justice Papageorgiou declined to strike a claim at a case conference. She reasoned that such an order required an analysis of the legal principles underlying the pleaded causes of action in a complex dispute between real estate developers. She noted that granting significant substantive relief at a case conference, without a factum or case law, would be unfair and would neither promote efficiency nor alleviate court backlog. [6] This case does not establish that substantive orders can never be made at a case conference. As Rule 50.13(6) states, powers may be issued at a case conference when appropriate. In *Edenshaw*, the court exercised her discretion to conclude that the particular requested orders were not suitable for a case conference in the circumstances of that case.

[28] In *Miller v. Ledra*,[7] the applicant sought production of certain corporate records. The respondent acknowledged that the applicant was a former director but denied that the applicant was a shareholder or entitled to the requested production. In that case, Justice Koehnen convened a case conference and directed the parties to exchange case conference memoranda.

[29] Justice Koehnen considered that case to be a classic case where a case conference should be used to determine the issue instead of a full motion or application hearing. He noted the backlog of cases on the Toronto Civil list, and that a motion under two hours would impose a 14 month wait on the parties. He found that the prejudice to the respondent in producing records to a former director was outweighed by the applicant's prejudice from the delay and the "institutional prejudice" to the justice system. He concluded that his order qualified as a "direction" under Rule 50.13(6).

[30] In the instant case, the appellants contend that a motion with a proper evidentiary record and sworn evidence was required. I disagree. The purpose of the case conference was for the application judge to interpret his own previous order. He had already determined that the appellants, who engaged in oppressive conduct and breached a *Mareva* injunction, would be responsible for penalties and interest resulting from their misconduct. It was undisputed that the receiver, appointed on November 10, 2020, was tasked with calculating and filing unpaid taxes from 2015 onward, a process that took years. The appellants argued that they ought not to be responsible for interest and penalties after November 10, 2020, because they had no control over the preparation of taxes once the receiver took over. The application judge reasonably concluded that wrongdoers cannot complain about the time taken to rectify their misconduct. Such a conclusion is in keeping with the broad remedial scope of the oppression remedy, which gives the court "a broad, equitable jurisdiction to enforce not just what is legal but what is fair".[8]

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[5] 2023 ONSC 6155 ("*Edenshaw"*).
[6] *Ibid*, at para 6.
[7] 2023 ONSC 4656.
[8] *1217174 Ontario Ltd. v. 141608 Canada Inc*., 2017 ONSC 7698, 77 B.L.R. (5th) 10, at para. 35.

[31] Scheduling a motion in this case would have unnecessarily increased costs for the parties, burdened the court, and delayed resolution of a dispute that has been ongoing for nearly nine years. Interpreting the previous order to require the appellants to pay interest and penalties that accrued after November 10, 2020, and are related to the second tranche, qualifies as a “direction” within the meaning of Rule 50.13(6)(c).

2. The appellants were not denied procedural fairness.

[32] The appellants argue that they believed the purpose of the conference was solely to explain the outstanding issues and to schedule a hearing on the merits, and that they were not permitted to file affidavits or factums. They also contend that their counsel was surprised when the application judge used the case conference to adjudicate contested issues. I would not give effect to these submissions.

[33] The receiver requested the case conference on behalf of the appellants, citing as its purpose "inter alia, interpretation of his previous orders/endorsements." The appellants did not raise any concern or disagreement with the court or the respondents regarding the stated purpose of the conference.

[34] In response to the request for a case conference, the application judge stated that “to make [the case conference] effective, I will require a case conference memo from each party setting out what they want and why they should get it.” It should have been clear to the appellants that the parties had the opportunity to request orders at the case conference. Furthermore, the application judge directed that the parties’ briefs be limited to five pages, “plus any necessary attachments.” He did not specify a page limit for attachments, and nothing prevented the appellants from filing an affidavit if they wished.

[35] The appellants were afforded ample opportunity to present their case through memoranda and attachments, and their failure to avail themselves of this opportunity does not constitute a denial of procedural fairness. They were adequately informed of the case conference’s purpose, of the orders the respondents’ sought, and provided with the means to present their case.

Disposition

[36] This appeal is allowed in part.

[37] The application judge’s order shall be amended to reflect that the appellants’ liability for penalties and interest relating to the second tranche shall be reduced from $1,145,245 to $853,172.

Costs

[38] The receiver does not seek costs.

[39] In accordance with the parties' agreement, the respondents, as the successful parties, are entitled to costs in the all-inclusive amount of $10,000.

_____
A. Kaufman, J.

I agree _____
Backhouse, J.

I agree _____
O'Brien, J.

Released: June 30, 2025

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