

COURT OF APPEAL FOR ONTARIO

CITATION: Peoples Trust Company v. PSP Services Inc., 2025 ONCA 524

DATE: 20250715

DOCKET: M56060(COA-25-CV-0683)

Madsen J.A. (Motion Judge)

BETWEEN

Peoples Trust Company

Moving Party

(Respondent/Appellant by Cross-Appeal)

and

PSP Services Inc.

Responding Party

(Appellant/Respondent by Cross-Appeal)

Ian C. Matthews and Laura Thistle, for the moving party, Peoples Trust Company

Gregory Gryguc, for the responding party, PSP Services Inc.

Heard: June 23, 2025

ENDORSEMENT

[1] Peoples Trust Company (“PTC”) brings this motion to partially lift the automatic stay of the order of Chalmers J. that, among other things, required PSP Services Inc. (“PSP”) to pay \$1,998,612.07 into court.

## **A. BACKGROUND**

[2] PTC offers payment card services. It serves as an “acquirer” with merchants seeking processing and settlement through Visa and Mastercard payment networks. PSP is an independent sales organization which operates under contract with a sponsoring acquirer. PTC and PSP entered into a seven-year contract which required, in part, that PSP permit PTC to perform an on-site inspection at any time during the contract to verify PSP’s compliance with the terms of the contract.

[3] In early February 2024, when PTC expressed concerns about excessive chargebacks, PSP gave notice it was terminating the agreement, which triggered a deconversion process. Further to a later incident in February 2024, PTC invoked an audit. PSC did not permit the audit and took the position that PTC did not have audit rights because PSP had terminated the agreement.

[4] On May 6, 2024, Myers J. made an order compelling PSP to submit to the audit and reasonably cooperate with it. That order was not appealed. PTC retained Ernst and Young (E&Y) to conduct the audit. Difficulties persisted and PSP did not cooperate with the audit process. Three further orders were made directing progress and completion of the audit, to no avail. Those orders were also not appealed.

[5] PTC brought a motion for contempt, with liability and penalty phases initially scheduled for May 24, 2024. The day before the contempt motion was to be heard, PSP agreed to permit the audit. Chalmers J. adjourned the matter. PSP continued to thwart the audit. The contempt motion was brought back on.

[6] On December 11, 2024, Chalmers J. heard the liability phase of PTC's motion for contempt brought against PSP. By reasons dated January 9, 2025, he found PSP in contempt of four orders of the court made in respect of the audit process. He determined that PSP intentionally breached the court orders, frustrating the audit process, and failing to permit real time access to PTC and its auditors.

[7] Having given PSP two months to purge its contempt, Chalmers J. heard the penalty phase of the proceedings on March 19, 2025. PSP did not purge its contempt. Chalmers J. considered the principles applicable to sentencing, including proportionality; the presence of aggravating and mitigating factors; deterrence and denunciation; the similarity of sentences in like circumstances; and the reasonableness of a fine or incarceration. He noted the repeated acts of contempt over a lengthy period, PSP's financial gain through its failure to comply with court orders; the lack of any remorse on the part of PSP; and PSP's chronic failure to comply with court orders despite being given ample time to do so. In the result, Chalmers J. ordered, *inter alia*: the appointment of an investigative receiver to enable the completion of the audit; that PSP pay into court the sum of

\$1,998,612.07, pending the completion of the audit (being an amount equivalent to the total invoices from E&Y in relation to audit steps taken); and costs in the amount of \$500,000.00 (together, the “Penalty Order”).

[8] PSP filed a Notice of Appeal on May 12, 2025. PSP does not seek to appeal the contempt finding or the appointment of the receiver. PSP seeks only to challenge the financial sanctions levied against it by the Penalty Order. The effect of filing the Notice of Appeal is to automatically stay the payment terms of the Penalty Order under r. 63.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

[9] PTC, in turn, brought this motion to partially lift the automatic stay. Specifically, it seeks payment into court of the \$1,998,612.07 as ordered by Chalmers J. in para. 2 of the Penalty Order. PTC argues that the partial lifting of the stay is in the interests of justice on the basis that PSP is a knowing contemnor of multiple court orders; such payment will not prejudice PSP; and the merits of the appeal are “very weak.” The order sought, according to PTC, aligns with and ensures the efficacy of contempt and penalty orders. PTC also seeks substantial indemnity costs with respect to the motion.

[10] PSP opposes the motion. PSP argues that PTC only seeks to complicate the proceeding given the acknowledged lack of concern with PSP’s ability to pay

and what it says is the lack of prejudice to allow the stay to simply continue pending the hearing of the appeal.

## **B. TEST FOR LIFTING AN AUTOMATIC STAY**

[11] Under r. 63.01(5) of the *Rules of Civil Procedure*, a party may bring a motion to a judge of this court to lift an automatic stay, which order may be granted on “such terms as are just.” The decision to lift a stay is discretionary: *Hrvoic v. Hrvoic*, 2023 ONCA 288, at para. 10.

[12] As set out by Lauwers J.A. in *Antunes v. Limen Structures Ltd.*, 2016 ONCA 61, at para. 13, where a party seeks to lift an automatic stay, the court will consider contextual factors: the grounds of appeal; the parties’ position at trial; what has happened since the trial; the general circumstances of the case, including the trial judge’s reasons; and the probable delay between trial and appeal that cannot be controlled by the parties.

[13] The test for lifting a stay is set out in *SA Horeca Financial Services v. Light*, 2014 ONCA 811, 123 O.R. (3d) 542, at para. 13, and requires consideration of three principal factors:

- a. the financial hardship to the respondent if the stay is not lifted;
- b. the ability of the respondent to repay or provide security for the amount paid; and
- c. the merits of the appeal.

[14] As noted, the context of the appeal is important. For example, if an appellant will still have to pay the respondent even if successful on appeal, the court may be more inclined to partially lift the stay: see *Hrvoic*, at para. 17.

### **C. APPLICATION**

[15] Before addressing the specific factors set out in *Horeca*, above, I address the context of this appeal.

[16] PSP has been found in contempt of multiple court orders. As indicated, PSP does not appeal the finding of contempt, only the financial terms of the Penalty Order. Here, the “only valid question” is how much the financial penalty will be, not whether there will be a penalty, given that liability for contempt is not challenged: see *Hrvoic*, at paras. 16-17; *Digiannateteo v. Leblanc* (1989), 71 O.R. (2d) 130 (C.A.).

[17] I turn to the test set out in *Horeca*.

[18] The first *Horeca* factor weighs in favour of partially lifting the stay. PTC risks potential hardship if the stay is not partially lifted. As PTC points out, the automatic stay heightens the delay and uncertainty of recovery in the event that it is the successful party on appeal. That is a valid consideration opposite a party with a history of disobeying court orders, who has been found to be a contemnor, and which has not appealed this designation. This uncertainty is lessened by having the funds paid into court now as ordered by the motion judge.

[19] The second *Horeca* factor also weighs in favour of partially lifting the stay. Where, as here, the moving party simply seeks to lift the stay of an order that requires payment into court, there is no risk to the appellant if they are successful on appeal. The typical concern that justifies the automatic stay—the uncertainty of recovery if the appellant had to pay the judgment and then succeeded on appeal—does not apply in this case: see *Antunes*, at para. 11. To the extent the appeal is successful, the funds will simply be paid out of court to PSP: see *Stein v. Sandwich West (Township)* (1994), 16 O.R. (3d) 321 (C.A.), at pp. 322-323.

[20] Turning to the third *Horeca* factor, the merits of the appeal appear weak. Judges have broad discretion to craft penalties on a finding of contempt of court: *Susin v. Susin*, 2014 ONCA 733, at para. 53. Absent an error in principle that had an impact on the sentence or a demonstrably unfit sentence, this court will not intervene: *R. v. Elenzi*, 2021 ONCA 834, at para. 6, citing *R. v. Lacasse*, 2015 SCC 64, [2015] 3 S.C.R. 1089, at para. 11; see also *Business Development Bank of Canada v. Cavalon Inc.*, 2017 ONCA 663, 416 D.L.R. (4th) 269, at para. 92.

[21] Notably, PSP does not allege that the penalty is demonstrably unfit. While PSP suggests, with imprecision, that Chalmers J. improperly applied “the principles of the appropriate penalty for civil contempt”, it does not allege specific error or errors. Chalmers J.’s penalty decision is detailed and careful. He addressed the applicable sentencing principles. He weighed those factors and reached a principled decision. He logically tailored the financial penalty to the E&Y

invoices with respect to audit activities. This factor also weighs in favour of partially lifting the stay.

[22] I would add that PSP candidly acknowledges in its factum that “there is no concern” with respect to its ability to pay. There is no suggestion that it will not be able to fund its appeal if the stay is partially lifted.

#### **D. CONCLUSION**

[23] For these reasons, the order sought is granted. The automatic stay of para. 2 of the order of Chalmers J. made April 25, 2025 is lifted. Accordingly, PSP shall pay \$1,998,612.07 into court on or before August 15, 2025.

#### **E. COSTS**

[24] PTC seeks costs of this motion on a substantial indemnity basis, in the amount of \$25,902.69. PTC notes that PSP filed no costs outline and is therefore not in a position to challenge PTC’s bill of costs. In any event, it says the preparation by PTC was clearly more fulsome than that by PSP. PSP seeks an award of no costs, on the basis that this was a procedural motion.

[25] The costs claimed by PTC are excessive for a short motion such as this. Costs are set at \$7,500, payable forthwith.

“L. Madsen J.A.”