

CITATION: Brandt Tractor Ltd. v. Morasse et al., 2025 ONSC 6898
DIVISIONAL COURT FILE NO.: DC-25-00000528-0000
DATE: 20251211

**SUPERIOR COURT OF JUSTICE - ONTARIO
DIVISIONAL COURT**

RE: BRANDT TRACTOR LTD.

Applicant

AND

MELISSA MORASSE and 1714433 ONTARIO INC.

Respondents

BEFORE: The Honourable Mr. Justice M.D. Faieta

COUNSEL: *Kristine Spence*, for the Applicant

Naomi Flanagan, for the Respondent Melissa Morasse

No one appearing for 1714433 Ontario Inc.

HEARD: December 9, 2025

ENDORSEMENT

[1] The applicant Brandt Tractor Ltd. brings this motion to stay the enforcement of an award of \$34,508.98 made by the Human Rights Tribunal of Ontario pending the determination of its application for judicial review of that decision on the basis that there is a real risk that Brandt will be unable to recover that payment from the respondent Melissa Morasse.

BACKGROUND

[2] In August 2019, the former owner of Nortrax Canada Inc. offered to sell its business to Brandt on condition that the sale close by October 31, 2019. Prior to closing, Brandt visited 29 Nortrax locations to determine which employees it would hire. Nortrax did not extend an offer of employment to any Nortrax employee that was unable to interview. Brandt was unaware that Ms. Morasse was on maternity leave. On October 31, 2019, Nortrax notified Ms. Morasse that the business had been sold and that her employment was being terminated, without cause, on account of the sale to Brandt. The Human rights Tribunal of Ontario (“HRTO”) found that Brandt had

discriminated against Ms. Morasse in terminating her employment on the basis of sex (pregnancy) and family status.

[3] On June 4, 2025, the HRTO ordered that Brandt pay \$30,217.27 for lost wages (less statutory deductions), \$20,000 in compensation for injury to dignity, feelings, and self-respect, pre-judgment interest from April 7, 2021 on both amounts, as well as post-judgment interest in the event that the award was not paid within 45 days.

[4] On July 3, 2025, Brandt commenced this application for judicial review. Amongst other things, it submits that the HRTO failed to apply, or misapplied, the law in concluding that Ms. Morasse's parental leave was a factor in Brandt's decision to not to hire her. This application will be heard on February 10, 2026.

ANALYSIS

[5] The test for granting a stay of an order pending an appeal was recently described by Lauwers, J.A. in *Miner-Tremblay v. Rintoul*, 2025 ONCA 784 as follows:

[7] The principles applicable on a motion for an order granting a stay pending appeal are well known. In *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, at p. 334, the Supreme Court of Canada set out a three-part test for obtaining a stay of a judgment pending appeal: (1) whether there is a serious question to be determined on appeal; (2) whether the moving party will suffer irreparable harm if the stay is not granted; and (3) whether the balance of convenience favours granting a stay.

[8] The factors are not “prerequisites” and “[t]he ultimate test for granting a stay is the interests of justice”. The components of the test are to be taken as interrelated considerations such that the strength of one may compensate for the weakness of another. In many cases, the court's determination of whether to grant a stay will ultimately depend on where the balance of convenience lies. In the end, the overarching test is “whether the interests of justice call for a stay”. [Citations omitted.]

[6] This test also applies to applications for judicial review.

Serious Issue to be Determined on the Application for Judicial Review

[7] Ms. Morasse concedes that there is a serious question to be determined on this application for judicial review.

Irreparable Harm

[8] Irreparable harm is characterized by the nature, rather than the magnitude of harm. It is harm which either cannot be quantified in monetary terms or cannot be cured, usually because one party cannot collect damages from the other: *Ahmed v. Abdelmoaen*, 2025 ONCA 618, para. 34. While absolute certainty is not required to establish irreparable harm, the evidence must be clear,

go far beyond speculation, and satisfy the balance of probabilities: *Muslim Association of Canada v. Attorney General of Canada*, 2022 ONSC 7284, at para. 17.

[9] The fact that one party may be impecunious does not automatically lead to the conclusion that a stay should be granted, although it may be a relevant consideration: *RJR-MacDonald*, at p. 341.

[10] A judgment creditor is entitled to the "fruit" of its litigation and the onus is on the appellant judgment debtor to show that on a balance of probabilities that it will suffer irreparable harm if it pays the judgment: *Fiske v. Nova Scotia (Attorney General)*, 2001 NSCA 159, para. 16, quoting *Pentagon Investments Ltd. v. Canadian Surety Company*, 1992 NSCA 54, 112 N.S.R. (2d) 86, at para. 11.

[11] A judgment creditor does not have to prove their financial stability as a condition of collecting on its judgment: *Anwar Construction Ltd. v. J.R. Phillips Electrics Ltd.* (1991), 108 N.S.R. (2d) 324 (C.A.), at para. 9. However, if a judgment debtor has led sufficient evidence to raise reasonable concerns about the judgment creditor's financial ability to repay the judgment, then a court may consider where the judgment creditor has adduced any evidence to allay those concerns: see *lululemon athletica canada inc. v. Industrial Color Productions Inc.*, 2021 BCCA 108 at para. 43.

[12] Brandt relies on *Livent Inc. (Receiver of) v. Deloitte & Touche*, 2016 ONCA 395, 131 O.R. (3d) 784, for the principle that a stay of the enforcement of a monetary award can be granted even when the evidence of irreparable harm is weak. In that case, a stay was granted in respect of a judgment of about \$118 million. Strathy C.J.O. found at para. 11 that payment of this judgment "... would be sufficiently disruptive of the appellants' business to amount to irreparable harm. While it is weak, it is sufficient to require an assessment of the balance of convenience." The sums at issue in this case are orders of magnitude smaller than the amount in *Livent*. There is no suggestion that Brandt's business would be disrupted by the payment of \$34,508.98 to Ms. Morasse.

[13] Brandt submits that there is a real risk that Ms. Morasse is not in a sufficiently financially secure position to repay the monetary award if Brandt's judicial review application is successful. This view is based on two things:

- (a) Speculation that Ms. Morasse is not working given that her profile on her LinkedIn page shows that Nortrax was her last employer.
- (b) Ms. Morasse's Notices of Assessment from the Canada Revenue Agency show that her gross income was \$56,185 in 2019, \$26,042 in 2020, and \$49,037 in 2021 and that her net income was \$53,358 in 2018, \$23,062 in 2020 and \$39,281 in 2021.

The ability to repay the judgment is best measured using evidence of the judgment creditor's current financial means including her current income and current net worth. There is no evidence of the respondent's current net income and her current net worth. The fact that the respondent's employment history on LinkedIn is dated does not mean that she does not currently earn income. Further, the respondent's income from four or more years ago is not proof of her current income.

The very weak evidence adduced by Brandt does not trigger any requirement for the court to consider whether respondent has adduced any evidence to demonstrate that she has the financial ability to repay the judgment. I find that there is no clear evidence, that goes beyond speculation, that Ms. Morasse will be unable to repay Brandt if their application for judicial review is successful.

Balance of Convenience

[14] Ms. Morasse will be deprived of the use of the award granted by the HRTO if the stay is granted. On the other hand, as noted, Brandt has not established on the balance of probabilities, with clear evidence, that Ms. Morasse will be unable to repay the award. The balance of convenience favours Ms. Morasse.

CONCLUSIONS

[15] The interests of justice dictate that this motion be dismissed. As agreed by the parties, costs in the cause of \$5,000 is granted.

M.D. Faieta J.

RELEASED: December 11, 2025