COURT OF APPEAL FOR ONTARIO

CITATION: Royce Presidential Investments Inc. v. Valour Group Inc., 2025 ONCA 903
DATE: 20251224
DOCKET: M56483 (COA-25-CV-1416)

Roberts J.A. (Motion Judge)

BETWEEN

Royce Presidential Investments Inc.

Plaintiff (Respondent/Responding Party)

and

Valour Group Inc., Valour Group Holdings Inc., Pro-Funds Inc., Carmen Campagnaro and Richard Hall

Defendants (Appellants/Moving Parties)

Garett Harper and Chanpreet Shokar, for the moving parties/appellants

Mark E. Day, for the responding party/respondent

Heard: December 5, 2025

REASONS FOR DECISION

Overview

[1] These proceedings arise out of the respondent's collection efforts in relation to the unpaid amounts it says are owing by the appellants for the advances of $600,000 plus interest that the respondent made under various unconditionally guaranteed promissory notes on September 14 and 15, 2023.

[2] The appellants appeal the motion judge's October 16, 2025 order striking out their statement of defence. The motion judge found that the appellants failed to comply with the August 28, 2025 order of McArthur J., requiring them to produce their affidavits of documents by September 12, 2025, failing which their statement of defence would be struck out.

[3] The appellants argue that the motion judge erred in prematurely striking out their statement of defence when other less draconian measures would have sufficed to ensure compliance with the August 28, 2025 order. They seek a stay of the October 16, 2025 order pending the disposition of their appeal.

[4] The respondent opposes the motion.

[5] Following the hearing of the motion, I permitted the parties to file further submissions concerning the terms, if any, that should be attached to a stay order, if one were granted, plus costs submissions, which I have received and reviewed.

[6] For the reasons that follow, I dismiss the motion.

Brief procedural background

[7] To frame the issues on this motion, it is necessary to set out the procedural background in some detail. In particular, this background demonstrates the myriad unsuccessful steps taken prior to the order under appeal to persuade the appellants to produce adequate affidavits of documents.

[8] The respondent's collection action was started by statement of claim on September 27, 2024. The appellants served a notice of intent to defend on October 25, 2024 and their statement of defense on November 25, 2024.

[9] On May 1, 2025, the respondent served its affidavit of documents. On May 28, 2025, respondent's counsel asked appellants' counsel when their affidavits of documents would be served. There was no response to that letter. On June 18, 2025, respondent's counsel advised appellants' counsel that they would bring a motion to strike out the appellants' statement of defence unless their affidavits of documents were served by June 27, 2025.

[10] On July 9, 2025, respondent's counsel served the motion to strike the appellants' statement of defence. On July 10, 2025, appellants' counsel served an unsworn affidavit of documents and a link to the Schedule A productions. On July 17, 2025, appellants' counsel provided, by email, the unsworn affidavit of documents of Richard Hall with a link to the Schedule A documents. By email dated July 17, 2025, respondents' counsel asked for production of the other affidavits of documents for Pro-Funds Inc., Richard Hall and Carmen Campagnaro, and inquired when sworn affidavits of documents and other productions would be provided. There was no response to this email. By email dated July 21, 2025, respondent's counsel advised that the affidavit of documents provided was "woefully inadequate" in that it included "no proofs of payment, no communications,

no financial statements, and no disclosure documents", and that the motion to strike was scheduled for July 31, 2025.

[11] By email sent on July 23, 2025, appellants' counsel asked for a four-week adjournment of the motion and proposed that they schedule dates for examinations for discovery by email or, alternatively, that they agree on a timetable for delivery of the appellants' sworn affidavits of documents and examinations for discovery. By email sent on July 23, 2025, respondent's counsel agreed to the adjournment but declined to set a timetable for the following reasons:

> A timetable is useless given your clients' delays to date. Proper affidavits of documents or default judgment are the only outcomes of any use to the plaintiff. Pleadings closed DEC05/24 and my client's affidavit of documents was served MAY01/25. If you tell me that the only documents in the possession of a regulated mortgage administrator are the promissory notes to my client, I will ask for instructions to proceed to examinations for discovery. I do not want to schedule dates for discovery while your clients' documentary disclosure is so deficient. As mentioned in my JUL21/25 email message (part of this chain), there are obvious classes of documents missing from the unsworn affidavit of documents of Valour Group Inc. [Emphasis added.]

[12] The respondent's motion to strike was adjourned and returned before McArthur J. on August 28, 2025. McArthur J. ordered the appellants "to produce their affidavits of documents as required by the rules by September 12, 2025, served on the [respondent's] counsel, failing which the Statement of Defence shall be struck" (emphasis added). McArthur J. also ordered the appellants pay the

respondent $1,000 for its costs of the motion and adjourned the motion to September 18, 2025 to be spoken to as to the status of the affidavits of documents.

[13] On September 12, 2025, the appellants served the affidavit of documents sworn by the appellant, Richard Hall.

[14] On September 15, 2025, respondent's counsel advised appellants' counsel that the appellants, except for Richard Hall, were in breach of the August 28, 2025 order for failing to produce affidavits of documents. Further, respondent's counsel advised that Richard Hall was in breach of the order because his affidavit of documents was deficient.

[15] In response, on September 16, 2025, appellants' counsel wrote:

> Richard [Hall] would sign the affidavits on behalf of the corporate defendants in any event and Carmen [Campagaro]'s affidavit would be the same.
>
> Richard [Hall]'s affidavit notes that he has searched the corporate records.
>
> We will not be producing any financial documentation – this is not a judgment debtor examination.
>
> If you are suggesting that there are other documents, such as emails, that modify or alter the contract, then we would expect those in your affidavit of documents.
>
> Otherwise, the relevant documents pursuant to the pleadings are the contracts.
>
> [Emphasis added.]

[16] On September 18, 2025, the matter was adjourned to September 25, 2025. In breach of the August 28, 2025 order, the appellants did not serve the other appellants' affidavits of documents until September 23, 2025. The affidavits of documents were identical in content.

[17] The motion could not be heard on September 25, 2025 and was further adjourned to October 16, 2025.

[18] On October 16, 2025, the motion was returned before the motion judge. The motion judge rendered his decision orally and gave the following reasons:

> Having heard the submissions of counsel and reviewed the documents provided, I am satisfied that the affidavit of documents provided is deficient, and it is consistent with the principles elaborated by the Court of Appeal of *Advanced Farm Technologies*. This is a case in which it would be appropriate to strike the statement of defence.

[19] The motion judge's written endorsement of the same date read: "Order to go as signed by me today".

Analysis

[20] The relevant criteria for a stay sought under r. 63.02(1) of the *Rules of Civil Procedure* are not controversial. The overarching consideration is whether the justice of the case warrants the requested stay. Informing that consideration are the following factors that the moving party must satisfy on a balance of probabilities: 1) the appeal raises a serious issue to be determined on the appeal;

2) the moving party will likely suffer irreparable harm; and 3) the balance of convenience favours the granting of the requested stay: *Hermina Developments Inc. v. Epireon Capital Limited*, 2025 ONCA 559, at paras. 11-12; *2642948 Ontario Inc. v. Jonny's Antiques Ltd.*, 2025 ONCA 381, at para. 17.

[21] None of these factors are watertight categories; the strength of one may compensate for the weakness of the others: *Zafar v. Saiyid*, 2017 ONCA 919, at para. 18. However, all three factors must be satisfied for a stay to be granted: *Carvalho Estate v. Verma*, 2024 ONCA 222, 170 O.R. (3d) 781, at para. 5.

1. Serious issue to be determined on the appeal

[22] I recognize that for the purposes of this stay motion, the serious issue to be tried factor represents a relatively low bar and requires the appellants to show that the appeal raises an arguable issue: *Zafar*, at para. 19.

[23] This stage of the analysis involves a preliminary assessment of the merits. In determining the weight to be placed on this preliminary assessment, it is important to consider the appellate standard of review, "as an appeal is not an opportunity for a rehearing of the case on the merits" and "[a]bsent an error of law or a palpable and overriding error of fact, [the motion judge's] findings will be upheld on appeal": *Carvalho Estate*, at para. 8.

[24] An arguable but weak appeal is a factor to be weighed in the overall consideration of the justice of the case: *2642948 Ontario Inc.*, at para. 32.

[25] The appeal here is arguable but weak. The appellants argue that the motion judge erred in the exercise of his discretion by striking out their defence in circumstances that did not warrant such a draconian step, and that he failed to adequately explain his reasons for doing so. They maintain that the affidavits of documents that were served were in substantial compliance with the *Rules* and the August 28, 2025 court order and that the dispute over the sufficiency of the documents listed in their affidavits was a matter for a production motion or exploration on examinations for discovery.

[26] I do not find the appellants' arguments persuasive, nor do I find it likely that they will prevail on appeal.

[27] It is common ground that the motion judge had the discretion to strike out the appellants' statement of defence under rr. 30.08 and 60.12 of the *Rules* and pursuant to the court's inherent discretion to control its own processes. Moreover, subject to his residual discretion to order otherwise, the motion judge was required to enforce the August 28, 2025 order. The order compelled the appellants to serve their affidavits of documents "as required by the rules" by September 12, 2025, or their statement of defence would, not might, be struck out.

[28] The principles governing the exercise of the motion judge's discretion in such circumstances are well established. In *Advanced Farm Technologies-J.A. v. Yung Soon Farm Inc.*, 2021 ONCA 569, 463 D.L.R. (4th) 179, at para. 10, referenced in the motion judge's oral reasons, Feldman J.A. adopted Brown J.A.'s summary of the relevant principles, as follows:

> This court has recently had the opportunity to address the issue of when it is appropriate to strike a pleading under Rule 30.08(2) of the *Rules of Civil Procedure* for non-compliance with document disclosure obligations in *Falcon Lumber Limited v. 2480375 Ontario Inc. (GN Mouldings and Doors)*, 2020 ONCA 310. In that case, the court summarized the applicable principles, at para. 57, as follows:
>
> > To summarize, several principles guide the exercise of a court's discretion to strike out a party's claim or defence under r. 30.08(2) for non-compliance with documentary disclosure and production obligations:
> >
> > • The remedy is not restricted to "last resort" situations, in the sense that it must be preceded by a party breaching a series of earlier orders that compelled better disclosure or production. However, courts usually want to ensure that a party has a reasonable opportunity to cure its non-compliance before striking out its pleading;
> >
> > • A court should consider a number of common sense factors including: (i) whether the party's

failure is deliberate or inadvertent; (ii) whether the failure is clear and unequivocal; (iii) whether the defaulting party can provide a reasonable explanation for its default, coupled with a credible commitment to cure the default quickly; (iv) whether the substance of the default is material or minimal; (v) the extent to which the party remains in default at the time of the request to strike out its pleading; and (vi) the impact of the default on the ability of the court to do justice in the particular case;

- The merits of a party's claim or defence may play only a limited role where breaches of disclosure and production obligations are alleged as one would reasonably expect a party with a strong claim or defence to comply promptly with its disclosure and production obligations;

- In considering whether an order to strike out a pleading would constitute a proportional remedy in the circumstances, a court should consider:

    - the extent to which the defaulting party's conduct has increased the non-defaulting party's costs of litigating the action, including the proportionality of those increased costs to the amount actually in dispute in the proceeding; and

> o to what extent the defaulting party's failure to comply with its obligation to make automatic disclosure and production of documents has delayed the final adjudication of the case on its merits, taking into account the simplicity (or complexity) of the claim and the amount of money in dispute. [Emphasis added.]

[29] The motion judge's order was in line with these principles. It followed several months of dogged but unsuccessful efforts by the respondent and the court to secure the appellants' compliance with their obligation to serve their affidavits of documents, first under the *Rules*, and then under the August 28, 2025 order. This compliance remained imperfect, notwithstanding many months of indulgences and the impending and severe consequence of the August 28, 2025 order requiring their statement of defence to be struck out if they failed to comply. It is significant that in breach of the August 28, 2025 order, the appellants did not even serve the majority of the appellants' affidavits until September 23, 2025 and have never paid the $1,000 costs order. This is a simple collection action that, after over a year, was just at the beginning of the documentary discovery stage when the appellants' statement of defence was struck out.

[30] It was also open to the motion judge to reject the affidavits of documents as insufficient and therefore not in compliance with the August 28, 2025 order. The August 28, 2025 order required the appellants to serve affidavits of documents "as

required by the rules" which meant with their form and contents in compliance with the *Rules*. The provisions of r. 30.03(1) require each party to serve an affidavit of documents "disclosing to the full extent of the party's knowledge, information and belief all documents relevant to any matter in issue in the action that are or have been in the party's possession, control or power". In accordance with r. 30.03(2), the affidavit of document must list "all documents relevant to any matter in issue in the action".

[31] Matters in issue in the action are defined by the pleadings. This is a simple collection action for unpaid advances made under guaranteed promissory notes that have matured. The statement of defence puts everything into issue: the appellants deny entering into the promissory notes (although they have produced them); they deny the guarantees; they deny receipt of any advances under the promissory notes; or, alternatively, they plead that the respondent was an investor in the appellants' projects whose investments were lost through no fault of the appellants.

[32] The served affidavits of documents clearly do not list all documents relevant to these issues. They only set out a list of the promissory notes and one piece of correspondence related to the assignment of one of the promissory notes by a third party to the appellants. Based on just the issues raised by the appellants in their statement of defence, this disclosure appears woefully insufficient. At a minimum, documents relevant to any receipts of the respondent's advances under

the promissory notes, the guarantees provided by the individual appellants and Pro-Funds Inc., correspondence with the respondent and internal documentation related to the promissory notes, the guarantees and the respondent's advances, the characterization of the advances by the respondent, etc., would be relevant to the issues raised in both the statement of claim and, importantly, in the statement of defence.

[33] It is therefore difficult to find error with the motion judge's conclusion that the served affidavits of documents were insufficient and not in compliance with the August 28, 2025 order. Such a decision would be subject to considerable appellate deference.

[34] Accordingly, while the appellants have raised an arguable appeal, it is very weak, and barely weighs in favour of granting the requested stay.

2. Irreparable harm

[35] The appellants argue that they will suffer irreparable harm to their business reputation if the stay is not granted and the respondent pursues enforcement of a default judgment.

[36] The appellants' bald statement of potential reputational harm is not sufficient to satisfy this criterion. There is no suggestion that the appellants' business may be irreparably harmed if collection proceedings go ahead because, for example, they may lose clients, or cannot satisfy any judgment, or may be driven out of

business. Nor do they argue that the appeal will be rendered moot if a stay is not granted.

[37] If the appellants prevail on their appeal, they can easily unravel the default proceedings. They do not argue that the respondent does not have the ability to repay any judgment collected. As the only effect on the appellants of not granting a stay is financial, there is no irreparable harm by granting the requested stay: *Hermina*, at para. 18.

[38] This factor does not favour granting a stay.

3. Balance of convenience

[39] While it may be inconvenient for the appellants to unwind any default proceedings that take place, any such inconvenience is outweighed by the prejudice to the respondent in delaying enforcement proceedings any further in the face of such a weak appeal.

4. Justice of the case

[40] A stay is an equitable remedy. A party seeking such a remedy must come to court with clean hands. This includes compliance with procedural obligations and court orders: *Blench v. Cheng*, 2024 ABCA 73, [2024] A.W.L.D. 1553, at paras. 5-6; *Beaver v. Hill*, 2018 ONCA 415, at para. 20.

[41] The appellants in this case do not have clean hands. They have not complied with their obligations under the *Rules*. They have breached the

August 28, 2025 court order in several respects: they did not serve all their affidavits of documents by September 12, 2025; the affidavits of documents were defective; and they did not pay $1,000 in costs. They never sought to appeal this order or set it aside. I note that they still have not produced revised affidavits of documents containing further relevant documents that must be in their possession and that they take the position that they are not obligated to do so.

[42] Moreover, the appellants' conduct to date in these proceedings demonstrates a desire to delay. According to the responding affidavit on the motion purporting to explain the appellants' failed compliance, the appellants did not provide timely instructions to their counsel. They are pursuing a weak appeal in what seems to be an endeavour to forestall the respondent's efforts to collect on the promissory notes to which they appear to have raised a perfunctory defence.

[43] I am not persuaded that the justice of the case warrants the requested stay, even if conditional on the appellants' satisfying all the respondent's suggested terms. The appellants object to all of these terms and simply suggest that the appeal be expedited and that they be ordered to comply with payment of the $1,000 already ordered to be paid in the August 28, 2025 order. Given the appellants' poor track record of compliance with court orders, it is highly unlikely that they will comply with any terms that I attach to the granting of the stay.

Disposition

[44] For these reasons, I dismiss the appellants' motion for a stay pending appeal.

[45] The respondent is entitled to its costs of this motion and the motion before Gambacorta J. (which were reserved to the disposition of this motion) from the appellants. If the parties cannot agree on the scale and quantum of the respondent's costs, they may make brief written submissions of no more than two pages, plus bill of costs, within 7 days of the release of these reasons.

"L.B. Roberts J.A."