COURT OF APPEAL FOR ONTARIO

CITATION: Miner-Tremblay v. Rintoul, 2025 ONCA 784
DATE: 20251117
DOCKET: M56408 (COA-25-CV-0948)

Lauwers J.A. (Motion Judge)

BETWEEN

Diana Lynne Ester Miner-Tremblay and Debra Jean Hazel Bowes

Plaintiffs (Responding Parties)

and

Kevin James Donald Rintoul, aka Kevin Donald James Rintoul and Karen Frances Rintoul

Defendants (Moving Parties)

Kevin Donald James Rintoul and Karen Frances Rintoul, acting in person

Matthew G.T. Glass, for the responding parties

Heard: November 7, 2025

REASONS FOR DECISION

[1] I paraphrase the trial judge's reasons to set the context for this motion by Kevin James Donald Rintoul and Karen Frances Rintoul, the moving parties, for a stay. The application was initiated by Diana Lynne Ester Miner-Tremblay and Debra Jean Hazel Bowes, now the responding parties, seeking to confirm the south boundary of their land in accordance with two R Plans filed on title. Their

lands border the Rintoul family's lots. The responding parties sought an order to remove what they claim are encroachments placed on their land by Kevin Rintoul together with damages.

[2] In the past, Mr. Rintoul built a structure he referred to as the ‘hound building’ and cement pad. He claims both are completely on his property, while the responding parties allege it encroaches on their property by a few feet. Mr. Rintoul claimed that in the early 2000s he and his father built a ‘new’ cedar fence on his property and extended it over the properties of his two sisters, Karen and Leslie Ann. The Rintouls brought a cross-application seeking a declaration that the surveys on title misdescribe the northern boundary of their respective properties. In the alternative they sought an Order finding the disputed property had vested with the Defendants by way of adverse possession, or by equitable remedy.

[3] The responding parties claimed that the fence is on their property and that at the time of construction their father, Bill Miner, objected.

[4] The trial judge, after a 13-day trial, found in the responding parties’ favour and issued the following judgment:

> Order:
>
> 1. The north boundary between Lots 2 and south boundary of Lot 3, is confirmed to be, as set out in Plans 26R-2694 and 26R-3217.

> 2. The Court Orders the Plaintiffs resume access to their property, by removal of fence constructed in part by the Defendant Kevin Rintoul across his and Karen Rintoul' s property and removal of equipment and structures located on the Plaintiffs property, including trailers and cement pad and hound building. Removal to occur within 120 days.
>
> 3. An Order of nominal damages payable by Kevin Rintoul to the Plaintiffs in the amount of $2,000.00.

[5] The Rintouls appealed and brought this motion for a stay pending appeal of those terms other than the damages award, which is stayed automatically by the appeal by r. 63.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

[6] Rule 63.02 permits a judge to stay a final order:

> 63.02 (1) An interlocutory or final order may be stayed on such terms as are just,
>
> (a) by an order of the court whose decision is to be appealed;
>
> (b) by an order of a judge of the court to which a motion for leave to appeal has been made or to which an appeal has been taken.

[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”: *M & M Homes Inc. v. 2088556 Ontario Inc.*, 2020 ONCA 134, 51 C.P.C. (8th) 253, at para 42. 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: see *Circuit World Corp. v. Lesperance* (1997), 33 O.R. (3d) 674 (C.A.), at p. 677. In many cases, the court’s determination of whether to grant a stay will ultimately depend on where the balance of convenience lies: *Circuit World*, at p. 677. In the end, the overarching test is “whether the interests of justice call for a stay”: *Longley v. Canada (Attorney General)*, 2007 ONCA 149, 223 O.A.C. 102, at para. 15; *Circuit World*, at p. 677.

[9] These principles are also borne out in the case law cited by the responding parties: *SBG-Skill Based Games Inc. v. Ontario (Alcohol and Gaming Commission)*, 2025 ONCA 692, at paras 13, 14, 17, 38, 39; *Avedian v. Enbridge Gas Distribution Inc.*, 2024 ONCA 53, at para 12; *Ontario Securities Commission v. Cacoeli Asset Management Inc.*, 2025 ONCA 465, at paras 16, 18, 30, 37.

[10] I now consider each branch: (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.

[11] On whether there is a serious question to be determined on appeal, I observe that the appeal predominantly challenges the factual findings made by the trial judge. Success on such appeals is rare because this court defers to the findings of fact by a trial judge including findings on credibility and reliability. For such an appeal to succeed, this court must find that the trial judge made a palpable and overriding error of fact. This appeal is therefore very weak. That said, it is an appeal as of right and it involves an interest in real property. Such an interest carries greater weight than a merely economic interest. The first branch of the test establishes a "low threshold", in which the moving party must establish only that its case "is neither vexatious nor frivolous": *RJR-MacDonald*, at p. 337.

[12] On whether the moving party will suffer irreparable harm if the stay is not granted, I note that the remedial work the moving parties must do under the order might well be costly although it does not subject them to irreparable harm.

[13] While the "irreparable harm" factor favours the responding parties, I conclude that the balance of convenience favours granting a stay. The harm claimed by the responding parties – the inability to sell their property – will not be eliminated by a stay, because any party wanting to buy will be made aware of the lawsuit and the pending appeal. If the moving parties are successful in the appeal, requiring them to remove the encroachments beforehand would be wasteful and unnecessary. This is a rural property and leaving the status quo intact while the appeal proceeds would not inconvenience anyone.

[14] For these reasons, I grant the motion to stay the judgment pending appeal.

[15] I am sympathetic to the responding parties' desire to get this appeal resolved as soon as possible. They point to an almost two-month delay in ordering of the trial transcripts. The Rintouls, who are now self-represented, say that it will take four months for the transcripts to be prepared. This is a case in which the appeal should be case-managed, to ensure that the Rintouls complete the necessary steps on a timely basis, and the appeal hearing be expedited. The costs of this motion are reserved to the panel hearing the appeal.

"P. Lauwers J.A."