

COURT OF APPEAL FOR ONTARIO

CITATION: Peoples Trust Company v. PSP Services Inc., 2026 ONCA 229

DATE: 20260327

DOCKET: COA-25-CV-0683

Miller, Monahan and Pomerance JJ.A.

BETWEEN

Peoples Trust Company

Plaintiff (Respondent/
Appellant by way of cross-appeal)

and

PSP Services Inc.

Defendant (Appellant/
Respondent by way of cross-appeal)

Gregory Gryguc, for the appellant/respondent by way of cross-appeal

Ian C. Matthews, R. Bevan Brooksbank and Laura Thistle, for the
respondent/appellant by way of cross-appeal

Heard: January 30, 2026

On appeal from the order of Justice William S. Chalmers of the Superior Court of
Justice, dated April 25, 2025.

REASONS FOR DECISION

[1] The appellant, PSP Services Inc. (“PSP”), is a payment processing company. The respondent/cross-appellant, Peoples Trust Company (“PTC”) is a trust company that provides payment card services. The parties entered into an

Acquiring Services and Sponsorship Agreement in 2019 (the “Agreement”). One of the terms of the Agreement entitles PTC to conduct on-site inspections of PSP to verify PSP’s compliance with terms of the Agreement.

[2] PSP began to experience a higher-than-expected level of chargebacks, and PTC became concerned that PSP was not complying with the Agreement. PTC required PSP to increase reserve funds, as it was obligated to do under the Agreement. PSP instead terminated the Agreement. PTC invoked its contractual right to conduct an audit, but PSP took the position that the audit right did not survive termination of the contract. PTC obtained a mandatory injunction to facilitate the audit. Notwithstanding the injunction, PSP repeatedly refused to comply with directions from the auditor, despite multiple demands and court appearances.

[3] On January 9, 2025, Chalmers J. found PSP in contempt of court, finding that PSP had “intentionally frustrated the audit process”, but refused PTC’s request that the court find PSP’s principal, Mr. Danny Gurizzan, jointly and severally liable for any financial penalties ultimately imposed on PSP. PSP was given two months to purge its contempt prior to the penalty phase. It did not do so.

[4] In his penalty reasons, Chalmers J. noted that (1) PSP had engaged in repeated acts of contempt over a prolonged period of time, (2) PSP failed to purge its contempt, (3) there was evidence that PSP had gained financially from its

contempt, (4) Mr. Gurizzan had refused to apologize for the contempt or concede PSP had done anything wrong, and (5) PSP's chronic failure to comply with court orders made general deterrence a paramount consideration on sentence.

[5] As sanctions, Chalmers J.: (1) appointed the auditor, Ernst & Young ("EY"), as Investigative Receiver, to better enable it to perform the audit; (2) ordered PSP to pay into court funds equal to the audit costs incurred by EY to date, totaling \$1,998,612.07; (3) ordered costs of the liability and penalty stages of the contempt motion in the amount of \$500,000.

[6] PTC sought an order that Mr. Gurizzan be held jointly and severally liable for PSP's contempt, relying on r. 60.11(6) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, which provides:

Where a corporation is in contempt, the judge may also make an order under subrule (5) against any officer or director of the corporation and may grant leave to issue a writ of sequestration under rule 60.09 against his or her property.

[7] Justice Chalmers declined to make the order finding Mr. Gurizzan personally liable on the basis that he is not a defendant and a finding of contempt had not been made against him:

Mr. Gurizzan is not a Defendant in the action. In my endorsement dated January 3, 2025, I did not make a finding of contempt as against Mr. Gurizzan personally. In the absence of a finding that Mr. Gurizzan was personally liable in contempt, I am not prepared to impose a penalty on him personally.

[8] PSP appealed the penalty order and PTC cross-appealed the decision not to impose joint and several liability on Mr. Gurizzan for PSP's contempt.

Analysis

[9] PSP's appeal of the sentence was dismissed from the bench with reasons to follow. These are the court's reasons for dismissal.

[10] The cross-appeal is allowed and PTC's motion to impose joint and several liability on Mr. Gurizzan is sent back to the motion judge for redetermination for the reasons that follow.

The appeal of PSP

[11] The basis for the sentence appeal is that the motion judge is said to have erred in the application of the principle of proportionality: the sentence is said to be disproportionate to the gravity of the contempt. The contempt, PSP argues, is not really contempt. It is a series of logistical difficulties and honest mistakes made in a good faith attempt to satisfy a complex undertaking.

[12] The difficulty with this submission is that it rests on a factual foundation that differs from what the motion judge found on the contempt motion, namely, that PSP had engaged in intentional obstruction of a court order. These findings were not appealed.

[13] The motion judge was also said to have made a palpable and overriding error in finding EY to be sufficiently independent to satisfy the role of Investigative

Receiver. This submission is difficult to understand, in that PSP did not appeal the appointment of EY. Rather, the submission is oriented as an attack on the order that PSP pay into court the \$1,998,612.07 representing nearly the full amount of the audit costs incurred to the date of the hearing.

[14] Having found that PSP's obstruction increased the audit's cost, the motion judge ordered the full costs of the audit to be paid into court, subject to EY's determination of what portion of the overall cost was attributable to PSP's obstruction. Once the amount of the increased cost was ascertained, EY was to be paid either directly by PSP or from the monies paid into court. PSP argues it should not have been ordered to pay the full amount of the audit costs into court but, rather, to pay something less. In PSP's submission, EY is effectively operating as a tool of PTC for the collateral purpose of financially ruining PSP with the expense of the audit.

[15] As with the previous submission, this submission lacks the necessary factual foundation. The appointment of EY as Investigative Receiver was not appealed and the probity of the appointment is therefore not in issue. Neither has PSP argued that the motion judge made a palpable error in finding that PSP's obstruction of the audit resulted in increased audit fees. If these increased costs resulted from PSP's actions in contempt, it is very difficult to understand how it could be disproportionate to the contempt to require PSP to pay them, or to pay the full cost of the audit into court. This was the penalty phase of a contempt

motion. PSP had already failed to comply with numerous court orders and it was not an error to require the company to provide some form of assurance that this order would be complied with.

[16] Finally, the motion judge's order with respect to costs of the motion is entitled to deference. The motion judge did not make any error in principle, and the decision is not plainly wrong. There is no basis to grant leave to appeal the costs order.

The cross appeal

[17] We agree with PTC that the motion judge appears to have misunderstood the legal basis for making the order it sought, that Mr. Gurizzan be held jointly and severally liable for the financial penalties imposed on PSP.

[18] The motion judge dismissed the motion on the basis that Mr. Gurizzan had not been found personally liable for the contempt. But the purpose of r. 60.11(6) is to allow courts to impose liability on directors and officer who have not been found personally liable for the contempt of their corporations. Had Mr. Gurizzan been found personally liable for contempt, there would have been no reason for PTC to proceed under r. 60.11(6). If a finding of personal liability for contempt were a prerequisite to making an order under r. 60.11(6), then the rule would serve no purpose.

[19] PTC asks this court to make the order of joint and several liability. We are not in a position to do so on this record. There are insufficient findings as to Mr. Gurizzan's involvement as the sole officer and director of PSP in PSP's acts of contempt in order to determine whether an order under r. 60.11(6) is appropriate. The better course is to remit the issue back for determination by the motion judge.

DISPOSITION

[20] The appeal is dismissed in its entirety. The cross-appeal is allowed and the issue of whether joint and several liability should be imposed on Mr. Gurizzan for the financial penalties imposed on PSP is remitted to the motion judge for rehearing.

[21] Costs of the appeal are awarded to PTC in the amount of \$33,000 inclusive of HST and disbursements. There are no costs awarded on the cross-appeal.

"B.W. Miller J.A."
"P.J. Monahan J.A."
"R. Pomerance J.A."