

CITATION: Canadian Arenas Corporation v. Gaj-Jablonski, 2023 ONSC 2688
COURT FILE NO.: CV-23-696641-0000
DATE: 20230502

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Canadian Arenas Corporations et al.

AND:

Wojciech Gaj-Jablonski et al.

BEFORE: J.T. Akbarali J.

COUNSEL: *Patrick Di Monte*, for the applicants

Eugene Gierczak, for the respondents

HEARD: May 2, 2023

ENDORSEMENT

[1] I was scheduled to hear a two-hour motion in this matter today. I have adjourned the motion for the reasons described below.

[2] The litigation involves a company operating under the name AMPERe. The individual applicants claim to be minority shareholders and/or creditors of the company. The respondent, Mr. Gaj-Jablonski, is the majority shareholder. He is also the inventor of four extremely valuable patents that may have been sold or licenced to AMPERe. There is also a non-party minority shareholder, Kathryn Langley Hope, who attended today with counsel.

[3] A dispute has arisen between the parties and at least one non-party, Ms. Langley Hope. It appears there may be dispute about whether AMPERe owns the patents in question. The minority shareholder applicants allege they are entitled to an oppression remedy on the basis that Mr. Gaj-Jablonski has taken steps including selling or licencing AMPERe's patents, or patents similar thereto, diluting the value of their shareholdings in AMPERe. They allege he has abandoned Ontario and relocated to the United States where he is conducting business in a manner oppressive to their interests as shareholders and creditors of AMPERe.

[4] The application seeks, among other things, temporary and permanent injunctive relief, an order for the delivery up of AMPERe's books and records, an order that the individual defendants cease and desist from licencing or attempting to licence the patents they claim are owned by AMPERe, an order that the individual defendants resign as directors of AMPERe and allowing the board of directors to be reconstituted by members of secured and unsecured creditors and minority

shareholders, or alternatively, that a receiver be appointed, a security for costs order, and an order piercing the corporate veil.

[5] Within the context of this application, the applicants have brought a motion seeking relief including that a new board of directors be constituted for AMPERe, an order directing the new board to take specific actions, including cancelling any sale or licencing of AMPERe’s intellectual property, delivery up of corporate records, an order appointing new signing officers of AMPERe, an order directing the Royal Bank of Canada to release information to the new board, an order that certain non-parties release information to the new board, and an order that the corporate veil be pierced. There is no indication that the non-parties affected by any order to deliver information have been served.

[6] In support of its motion, the applicants have filed multiple affidavits, including one which is three volumes in size, without an index, and not hyperlinked. Trying to find an exhibit to this affidavit requires one to hunt for it, an exercise that is unnecessary, time-consuming and inefficient.

[7] In response, the respondents have filed a notice of cross-motion, seeking relief including an interlocutory and permanent injunction against the applicants and other affiants relating to intellectual property, a declaratory order to place a notice in the media that the applicants have no authority or association or right to be associated with AMPERe, damages in the amount of \$400 million “in violation of the rights outlined herein”, plus damages in the amount of \$100 million for “malicious planning and orchestration of the unlawful taking of the materials and prototype on January 13, 2023...”, and an order adding others as applicants, or granting leave to add them as third parties, including Ms. Langley Hope, and an order joining this application with an application to be commenced by the respondents against the applicants and others.

[8] The respondents also seek an order for the return of intellectual property and prototypes, including the items taken from AMPERe’s premises on January 13, 2023, plus documents in the hands of Mr. Mahut, a former AMPERe director and CEO. They argue that their request for this relief is urgent, because the property was wrongfully taken from AMPERe, which requires it to continue its business operations.

[9] In support of their motion, the respondents have uploaded ten affidavits, all sworn by the same affiant. As of yesterday, the respondents had not uploaded a factum. One has since appeared in CaseLines, with insufficient time for me to review it before the start of the hearing. I understand now that this was consistent with the timetable ordered, but no one provided me with the timetable in the materials that had been uploaded, so I was not aware to look for it.

[10] At the same time, Ms. Langley Hope attended today with counsel. She states she only received notice of these proceedings very recently and was able to retain counsel last week. Counsel only accessed some of the materials on April 28, 2023, and has been unable to prepare a response. Ms. Langley Hope raises questions about whether the applicants’ counsel properly speaks for her, as a minority shareholder. She is also implicated in the respondents’ cross-motion.

[11] Counsel for the respondents does not oppose an adjournment.

[12] Counsel for the applicants does oppose the adjournment, but states that at a minimum, interim interim interlocutory relief is required. He suggests that Mr. Gaj-Jablonski be restrained from taking any steps in connection with AMPERe, either as a shareholder, officer or director, to preserve the value of the applicants' shareholdings or credit positions in AMPERe. He alleges that allowing Mr. Gaj-Jablonski to continue to conduct business without restraint may lead to something bad happening to the interests of the applicants through the sale of further licencing of AMPERe's patents.

[13] The respondents argue that AMPERe's board is functioning. They suggest an interim order provide for the continuation of the board and the return of AMPERe's intellectual property, prototypes and documents, pending a return date for the motion.

[14] I have raised with the parties my many concerns about this litigation, including:

- a. The parties are seeking final relief or what amounts to an interim order with significant effect on interim motions.
- b. The respondents seek relief, including final relief, on a motion when as of yet, they have issued no originating process.
- c. The parties present very different versions of the factual narrative. It seems to me this ought to be an action, not an application.
- d. The manner in which the materials have been prepared and uploaded into CaseLines makes it impossible for me to work through and locate what is necessary. Here I refer not only to the multiple affidavits from the same affiant filed by the respondents, but also the lengthy affidavit material that is neither indexed nor hyperlinked by the applicants.
- e. Materials were uploaded too late for me to be able to review them.
- f. There is no material from Ms. Langley Hope, who appears to have a legitimate interest in participating in the process, but is not currently a party.
- g. The scope of the relief sought on what is ostensibly an urgent motion is far too broad for it all to be truly urgent, and the expanded scope of the motions have led to the materials being too long, unfocused, and confusing.
- h. There is no conceivable way these issues can be adjudicated within two hours.

[15] I direct the parties to schedule an urgent case conference under r. 50.13, at which the conference judge may assist the parties in determining the best process to advance this litigation. This motion is adjourned pending the case conference. I note that the parties had discussions about adjournment terms in a break out session during the course of this motion and it appeared they were exploring some potentially useful strategies to settle down the urgent aspects of this litigation.

I encourage them to continue those discussions and, if helpful, raise those points at the case conference if the case conference judge might be able to assist.

[16] It may be that an urgent motion is required to address (i) whether the board of directors of AMPERe ought to be dissolved, and how a new board ought to be constituted; and (ii) whether the prototypes, documents, and intellectual property of AMPERe ought to be in the hands of a new custodian, and if so, who and for what purpose. However, if those motions go forward, there should be some thought given to whether the current motion materials ought to be streamlined to make for a record that is reasonable to ask a judge to read for a short, urgent motion, and that is properly focused.

[17] I encourage counsel to have discussions amongst themselves to determine what process makes sense going forward.

[18] As for the parties' request for terms of this adjournment. I am prepared to order, on a without prejudice, interim interim basis, until the return of this matter to a case conference that all parties be restrained from selling, encumbering, or licencing the property owned by or licenced to AMPERe without consent of all parties to this litigation who claim to be shareholders, officers or directors of AMPERe, and any person known to claim to be a shareholder, officer or director of AMPERe, or without further order of the court.

[19] Finally, I make the following directions with respect to CaseLines which the parties must follow for any and every future attendance, unless otherwise ordered by the court:

- a. All materials shall be uploaded to CaseLines by at least 48 hours before the attendance. The parties must take care to ensure that their materials are uploaded into the correct bundle, i.e. motion materials into the correct motion bundle, pre-trial materials into the pre-trial bundle, etc.
- b. All materials shall be hyperlinked, including references to the evidence and law in the factums, and references to exhibits in the affidavits. Links to the law in the factum should link to the portion of the decision on which counsel relies. Affidavits and/or exhibits to affidavits shall not be uploaded as separate documents in CaseLines but rather uploaded as part of a volume in a motion record.
- c. All indices must hyperlink to the documents described in them, and all documents must link back to the index of the volume in which they are contained. The parties must confirm that the hyperlinks are working on CaseLines, and specifically that in uploading the documents to CaseLines, the hyperlinks have not been scrubbed.
- d. The book of authorities shall consist of a hyperlinked index, and copies of any cases that are not available online.
- e. The parties should attempt to agree on costs in advance of the motion, if possible. If not possible, costs outlines shall be uploaded by the outset of the motion, along with any offers to settle, which shall be clearly marked so the motion judges does not inadvertently view them prior to determining the motion on the merits.
- f. The parties shall, when listing on their Motion Confirmation Form the "Materials Filed and to be Relied on at the Hearing", include CaseLines document numbers

- and page references for each document.
- g. The parties shall come prepared to argue the motion using CaseLines page numbers, and shall confer with each other to ensure all parties are using the same set of page numbers (i.e., either the master or the current). The parties may wish to use the “direct to” feature or presentation mode on CaseLines.
 - h. The parties shall upload a copy of their proposed draft order to CaseLines in advance of the motion.
 - i. Unless they are relevant for some reason, affidavits of service shall not be uploaded into CaseLines.
 - j. For a pretrial settlement conference hearing, the parties are reminded to file their pretrial memos and a jointly-prepared draft Rule 50.08 Trial Management Report to Trial Judge.
 - k. The parties are reminded that technical support for CaseLines is available by telephoning 1-800-290-9378.
 - l. Failure to comply with these requirements may result in the matter not proceeding at the designated time.

J.T. Akbarali J.

Date: May 2, 2023