

CITATION: 2650795 Ontario Inc. v. 2524991 Ontario Corporation et al, 2023 ONSC 3139
COURT FILE NOS.: CV-21-00673872; CV-21-00673218
DATE: 20230214

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: 2650795 ONTARIO CORPORATION Plaintiff (Defendant by Counterclaim)

AND:

2524991 ONTARIO CORPORATION and 2667349 ONTARIO CORPORATION Defendants (Plaintiffs by Counterclaim)

AND RE: 2650795 ONTARIO INC. Applicant

AND:

2524991 ONTARIO CORPORATION, QINGXIN SHAO, also known as NEWRY SHAO, and ZOUBO GU, also known as STEVEN GU Respondents

BEFORE: Justice Chalmers

COUNSEL: *S. Turk* for the Defendants (Plaintiffs by Counterclaim) / Applicants

J. Goldblatt and *C. Rempel* for the Plaintiff (Defendant by Counterclaim) / Respondent

HEARD: January 18, 2023, by videoconference

ENDORSEMENT

OVERVIEW

[1] There are two proceedings before the Court.

[2] In the Action (Court File No. CV-21-67872), 2524991 Ontario Corporation (252) claims that 2650795 Ontario Inc. (265) and 2667349 Ontario Corporation (266), engaged in oppressive acts in relation to 252's attempts to satisfy the final arbitral award of Larry Banack, dated May 21, 2021 (the Final Award), (the Oppression Action). In the Application (Court File No. CV-21-00673218), 265 seeks judgment in accordance with the Final Award and Mr. Banack's subsequent awards, (the Enforcement Application).

[3] 252 brings this motion for an interim order staying the enforcement of the Final Award, pending the hearing of the Oppression Action. The motion is brought in respect to both the Enforcement Application, under s. 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, (*CJA*)

and in the Oppression Action under s. 248(3)(a) of the *Business Corporations Act*, R.S.O. 1990, c. B.16, (*BCA*).

[4] 252 argues that 265 engaged in oppressive acts that prevented 252 from selling the property at 409 Huron Street, Toronto (the Property) which they jointly owned through 266. 252 argues that the sale of the Property would have generated sufficient funds to allow 252 to satisfy the Final Award and would have allowed the parties to end their business relationship. 265 denies that it engaged in any oppressive conduct. It argues that pursuant to the decision of Arbitrator Banack, 252 had the right to satisfy the Final Award before July 22, 2021. 252 failed to meet the deadline, and therefore there could be no expectation that 265 would agree to the sale of the Property after that date. 265 argues that the circumstances of this case do not justify the exceptional remedy of a stay of execution.

[5] At the commencement of the hearing, I granted judgment in the Enforcement Application in accordance with the Final Award, (the Judgment). This was on the consent of the parties. I then heard the motion brought by 252 to stay the enforcement of the Judgment, and for interim relief in the Oppression Action. For the reasons set out below, I find that 252 is entitled to a stay of the Judgment, pending the determination of the Oppression Action. However, this is without prejudice to the parties making a further application before me, for directions with respect to a court-directed sale of the Property.

FACTUAL BACKGROUND

[6] 252's principals are Qingxin (Newry) Shao and Zoubo (Steven) Gu. In June 2016, they purchased the Property through their company 252 Ontario. The Property is a 40-unit apartment complex. On August 29, 2017, DUCA Financial Services Credit Union Ltd. registered a mortgage on title to the Property, in the amount of \$5,325,000.

[7] Tao Song, the principal of 265 was introduced to Ms. Shao and Mr. Gu. He represented a group of investors who were looking to invest in real estate development projects in the Greater Toronto Area. His group decided to purchase a 40% interest in the Property. In March 2018, 265 and 252 entered into a joint venture and co-ownership agreement, whereby 265 would hold a 40% interest in the Property and 252 would hold a 60% interest. 266 was incorporated to hold title, on behalf 252 and 265, as bare trustee.

[8] When 252 was negotiating with 265 in respect of 265 acquiring an interest in the Property, 252 misrepresented the price it initially paid for the Property. It is conceded by 252 that it delivered documents to 265 that were not authentic, including a fraudulent Agreement of Purchase and Sale. The admitted fraudulent conduct on the part of 252 formed the basis for the award of punitive damages in the Final Award.

[9] On February 28, 2020, 265 delivered a default notice under the Joint Venture Agreement, regarding funding contributions. The parties agreed to refer the dispute to Arbitrator Banack.

[10] By the time the Arbitration was heard, both parties agreed that they wished to separate their business interests and that 252 would have the opportunity to purchase 265's 40% interest in the Property. The Arbitrator was required to determine the fair price for 265's interest in the Property.

[11] On May 21, 2021, the Arbitrator issued the Final Award. He awarded a monetary payment to 265 for its interest in the Property. 252 was permitted to control the Property. The award with respect to the purchase by 252 of 265's interest, was as follows:

192. From April 23, 2021, the Defendants [252] shall have 90 calendar days, that is until on or before July 22, 2021, to purchase [265's] 40% interest in 266. The purchase price shall consist of:

- a. \$4,296,518, representing a return of [265's] capital contribution;
- b. \$868,101.40, being the payments [265] would have received by March 1, 2021, in accordance with Schedule 7.1 [of the Joint Venture Agreement] given the capital contributions it had made as of December 31, 2019;
- c. \$100,000 in punitive damages;

[...]

193. In the event the anticipated purchase of [265's] interest of the Project is concluded within the allotted time, the Defendants [252] shall receive a credit on closing of the purchase of [265's] interest in 266 and the Project in the amount of \$100,000 and will not be obligated to pay the punitive damages fixed herein.

194. In the event the anticipated purchase of [265's] interest in the Project does not occur as provided, [265] shall have judgment against all the Defendants in the amount of \$5,164,619.40, plus prejudgment interest to the date of this Award, plus \$100,000 punitive damages, and post-judgment interest on the total sum of \$5,264,619.40 from the date of this Award, in accordance with the *Courts of Justice Act*, and costs of this Arbitration as determined on the schedule set out below.

[...]

196. The parties shall reasonably co-operate with each other to execute all documents and obtain all required consents to give effect to the transaction set out above including, but not limited to:

- a. removing [265] from any mortgage covenants, and its principals from any guarantees;

- b. lifting any certificates of pending litigation or other encumbrances registered by 265 against the Property; and
- c. transferring [265's] interest in 266 and the Property to 252 or a third party designate.

[12] After the Final Award, 252 took steps to secure a purchaser for 265's 40% interest. On May 28, 2021, 252 asked for 265's consent to list the Property on the open market. 265 refused to provide its consent.

[13] In early June 2021, Ms. Shao and Mr. Gu, on behalf of 266 (the registered owner of the Property), received a signed Agreement of Purchase and Sale from 1471756 Ontario Inc. to purchase the entire Property for \$15 million. Negotiations increased the sale price to \$15.7 million. 266 entered into an Agreement of Purchase and Sale on June 11, 2021. The closing date was 60 days after the buyer waives or satisfies the due diligence condition. On the closing of the sale, 252 would have had sufficient funds to pay the amount owing to 265 on the Final Award, after redeeming the DUCA Mortgage.

[14] 265 was notified of the Agreement of Purchase and Sale. It took the position that 266 entered into the Agreement without the approval of all shareholders and therefore the sale was in breach of s. 184(3) of the *BCA*. 265 refused to consent to the sale of the Property.

[15] 252 did not satisfy the Final Award by July 22, 2021. 265 sought another hearing before Arbitrator Banack. 265 took the position that 252 had acted oppressively against it by not satisfying the Final Award. 265 sought to be awarded the Property itself.

[16] The hearing took place on August 31, 2021. By reasons delivered on September 29, 2021, the Arbitrator dismissed 265's request for control of the Property. The Arbitrator found that 265 was entitled to monetary damages for its interest in the Property, and nothing more. He stated as follows:

74. For the foregoing reasons, I conclude that the Plaintiff [265] is not entitled to an oppression remedy to purchase 252's interest in the Property. The Plaintiff has an award that it can enforce against all of the Defendants in the amount of \$5,164,619.40, plus pre-judgment interest to May 21, 2021, in addition to \$100,000 in punitive damages given the Defendant's failure to redeem the Plaintiff's interest in the Project by July 22, 2021, and post-judgment interest on the total sum of \$5,264,619.40 from May 21, 2021, in accordance with the *Courts of Justice Act*.

[...]

77. In the circumstances and in light of the Award which affords the Plaintiff a full remedy for its damages and given my conclusions above, I conclude that this is not an appropriate situation for an oppression remedy for the relief sought by the Plaintiff as claimed in paragraph 13, above.

[17] The Arbitrator concluded that because the July 22, 2021, deadline had passed, 265 was entitled to the full amount awarded, without a reduction of the punitive damage amount. The Arbitrator stated that the Final Award fully compensates 265 for its interest in the Property. The Arbitrator confirmed that 265 was not entitled to possession of the Property.

[18] Ms. Shao and Mr. Gu renewed their efforts to sell the Property. On October 23, 2021, they secured another offer, this time for \$15 million. Again 265 took the position that it would not agree to the sale of the Property. The sale price of \$15 million would have been sufficient to allow 265 to be paid in full, after the DUCA mortgage was redeemed.

[19] 252 sought a ruling from the Arbitrator to confirm that the Property could be sold without 265's consent. The hearing took place on November 1, 2021. By endorsement dated November 2, 2021, the Arbitrator stated that the conditions for a non-consensual sale of the Property to a third party was never raised prior to his final determination of the dispute and is not within the scope of the Arbitration Agreement.

[20] The Arbitrator stated as follows:

While the Defendants [252] relied heavily in this motion on the terms of sale included in the Award of May 21, 2021, they fail to account for the fact that those terms included a requirement that the Plaintiff's [265] interest be purchased by *July 22, 2021*, which was not accomplished. After that date and once the Plaintiff failed to establish its right to an Oppression Remedy, the Award became enforceable like any other debt, and the arbitration had come to an end.

[21] On November 12, 2021, 265 used a related corporate entity, 1000013242 Ontario Inc. to take an assignment of the DUCA mortgage. At that time, the mortgage was in default. The assignment of the mortgage was without notice to 252. 252 has since taken the position that the assignment of the mortgage breached the Joint Venture Agreement which provides that "major decisions" are to be agreed upon unanimously by 252 and 265. Major decisions are defined in the Agreement to include financing and refinancing the Property.

[22] On December 16, 2021, 252 commenced the Action against 265 seeking relief from oppression. The relief sought also includes a derivative action on behalf of 266 to allow it to sell the Property. 265 issued a counterclaim in which it seeks an accounting of the revenues and expenses for the Property for the period after May 21, 2021, and payment of any amounts arising from the accounting. 265 also sought an order requiring 252 to vacate and to permit 265 to take occupancy and control of the Property. 265 also commenced the Application seeking Judgment in accordance with the Final Award.

[23] 252 brings this motion to stay the enforcement of the Judgment in the Enforcement Application and for interim relief in the Oppression Action.

THE ISSUE

[24] The issue to be determined on this motion is whether 252 is entitled to an order restraining 265 from enforcing the Judgment pending the disposition of the Oppression Action.

ANALYSIS

The Appropriate Test

[25] In the Enforcement Application, 252 seeks to stay the enforcement of the Judgment. 252 takes the position that a stay may be granted, pursuant to s. 106 of the *CJA*, and R. 60.17 of the *Rules of Civil Procedure*. 252 also takes the position that it is entitled to interim relief in the Oppression Action, pursuant to s. 248(3) of the *BCA*.

(1) Section 106 of the CJA

[26] The jurisdiction to grant a stay of a judgment is found in s. 106 of the *CJA*, which states as follows:

Stay of Proceedings

106. A court, on its own initiative or on motion by any person, whether or not a party, may stay any proceeding in the court on such terms as are considered just.

[27] Section 106 of the *CJA* applies to a stay of a final order or judgment: *1852998 Ontario Ltd. v. Halton Condominium Corp.*, 2021 ONSC 6566, at paras. 24-42. The Court of Appeal recently confirmed that the general authority of the court to stay a proceeding, pursuant to s. 106 of the *CJA*, can be applied to the enforcement of a judgment: *Peerenboom v. Peerenboom*, 2020 ONCA 240, at para. 30.

[28] In the case of a stay of final order, a more stringent test than the ordinary three-part *RJR-McDonald* applies: *1247902 Ontario Inc. v. Carlisle Power Systems Ltd.*, [2003] O.J. No. 6300 (Div. Ct.); aff'd [2005] O.J. No. 118 (CA) (*Carlisle*), at para. 10. The stay of the execution of a judgment may be granted in rare circumstances, where the moving party establishes the following:

1. Continuance of the proceeding through execution would amount to injustice because it would be oppressive, vexatious or an abuse of the Court's process; and,
2. The stay does not cause an injustice to the party entitled to judgment: *1247902 Ontario Inc. v. Carlisle Power Systems Ltd.*, at para. 30, and *Peerenboom v. Peerenboom*, at para. 34.

[29] A stay is to be used only in rare circumstances. As stated by Cunningham A.C.J. in *Carlisle*:

There is good reason for the bar to have been set so high. As the earlier authorities have so often stated, judgments ought to be considered final and creditors should have unencumbered rights of enforcement. For a defendant to be able to raise equitable grounds at that stage would derogate from the notice of finality. It would frustrate commercial enterprise and needless to say would encourage a whole new area of litigation.

[...]

Accordingly, we have concluded that in very rare circumstances there is discretion under s. 106 of the *CJA* to stay the enforcement of a final judgment. This discretion ought to be used very sparingly and only in circumstances where it could not be found that not only would it be oppressive or vexatious or an abuse of process of the court, but also in circumstances where it would not cause an injustice to the plaintiff: *1247902 Ontario Inc. v. Carlisle Power Systems Ltd.*, at paras. 7 and 10.

(2) Section 248(3) of the *BCA*

[30] In the Oppression Action, 252 seeks to stay enforcement of the Judgment under s. 248(3) of the *BCA*, which provides that the Court may grant any form of interim relief it thinks fit to restrain oppressive conduct:

Court Order

(3) In connection with an application under this section, the court may make any interim or final order it thinks fit including, without limiting the generality of the foregoing,

a) an order restraining the conduct complained of; [...]

[31] Section 248(3) of the *BCA* confers wide and comprehensive discretion for the court to fashion the appropriate remedy on an interim or final basis to rectify oppressive or unfairly prejudicial conduct. The three-part test from *RJR-MacDonald* applies to an application for interim injunctive relief. The moving party must show that there is a serious issue to be tried, irreparable harm would result if the relief is not granted, and the balance of convenience favours the granting of the relief: *Macreanu v. Godino*, 2020 ONSC 535. at paras, 66 and 68.

Application to the Facts of the Case

[32] 252 argues that it is entitled to a stay of the Enforcement Application pursuant to s. 106 of the *CJA*. It also argues that it is entitled to a stay as interim relief in the Oppression Action under s. 248(3) of the *BCA*. I am satisfied that 252 meets the test for a stay under both the *CJA* and *BCA*.

Section 106 of the CJA

[33] Under s. 106 of the *CJA*, 252 must establish that continuance of the proceeding through execution would amount to an injustice because it would be oppressive, vexatious or an abuse of the Court's process; and the stay does not cause an injustice to the party entitled to judgment: *1247902 Ontario Inc. v. Carlisle Power Systems Ltd.*, at para. 30.

[34] 252 states that 265's conduct has been both abusive and oppressive, in that:

- (a) 265 has refused to co-operate with 252 in permitting it to satisfy the Final Award;
- (b) 265 has interpreted the Final Award as barring 252 from selling the Property to satisfy the Final Award;
- (c) 265 was awarded monetary damages in the Final Award to fully compensate it for its interest in the Property, but is now taking the position it is entitled to possession of the Property;
- (d) 265 seeks to enforce the Final Award but refuses to allow the Property to be sold which would allow 252 to satisfy the Final Award; and
- (e) 265 has violated the spirit and intent of the Joint Venture Agreement by taking an assignment of the DUCA mortgage and becoming a secured creditor of the Property.

[35] 252 also argues that 265's actions are an abuse of process. 265 has taken the position that it is entitled to possession of the Property because 252 did not buy-out its interest by July 22, 2021. This is the same issue that was determined by Arbitrator Banack on the Second Award. The Arbitrator determined that 265's remedy is limited to the monetary payment set out in the Final Award which includes punitive damages, pre- and post-judgment interest and costs. He specifically held that 265 is not entitled to possession of the Property. 252 argues that 265 is attempting to relitigate this issue.

[36] 265 states that it did not engage in oppressive conduct. The Final Award contemplated 252 buying out 265's minority interest in the Property by July 22, 2021. The Final Award did not contemplate that the Property would be sold to a third party. 265 also argues that although the intention of the parties was that 252 would purchase 265's interest in the Property, the right to purchase was not open ended. The Arbitrator imposed a deadline of July 22, 2021. 265 states that 252 had the opportunity pursuant to the Final Award to purchase the interests of 265 by a

specific time, for a set price, and failed to do so through no fault of 265. 265 argues that its right to enforce the Judgment should not be stayed as a result of 252's failure to purchase its interest within the deadline set out in the Final Award.

[37] It is my view that to allow enforcement of the Judgment would amount to an injustice because it would be oppressive and an abuse of process, in the circumstances.

[38] The Final Award provides that 265 is entitled to a monetary payment for its interest in the Property. Once the monetary payment is made, 265 would have no further involvement in the Property. To generate the funds to satisfy the Judgment, 252 proposes selling the Property. This seems to me to be a reasonable approach. Pursuant to the Final Award, 265 is entitled only to a monetary payment for its interest in the Property. How the money is raised to pay the Judgment should be of no significance to 265.

[39] Instead of co-operating in the sale of the Property which would allow the Judgment to be satisfied, 265 has refused to agree to the sale. It is insisting on enforcement of the Judgment in the Enforcement Application but at the same time is refusing to co-operate in the sale of the Property which would generate sufficient funds to allow 252 to satisfy the Judgment. Its position is inconsistent with the common intention of the parties expressed at the Arbitration to end their business relationship with a payment to 265 of its 40% interest in the Property.

[40] 265 justifies its position by stating that the Final Award imposes a deadline of July 22, 2021, for 252 to buy-out 265's interest. The deadline was not met and therefore 265 is not required to accept a buy-out to satisfy the Judgment. I do not read the Final Award as creating a firm deadline for the buy-out of 265's interest in the Property. The Final Award provides that if the purchase is made before July 22, 2021, the purchase price will be reduced by the punitive damage award in the amount of \$100,000.

[41] The Final Award contemplates a buy-out after July 22, 2021. It provides that if the monetary payment is made after that date, it will include the punitive damages of \$100,000. Any misunderstanding as to what 265 was entitled to if the buy-out did not take place by July 22, 2021, was clarified in the Second Award. The Arbitrator specifically stated that even though the purchase was not made by July 22, 2021, 265's entitlement is limited to a monetary payment which includes the punitive damage award. The Arbitrator specifically denied 265's claim that it was entitled to possession of the Property.

[42] It is my view that a stay would not cause an injustice to 265.

[43] The issue of the monetary payment to be received by 265 has been determined by the Arbitrator. The monetary amount is not reduced by the award of punitive damages because 252 did not purchase 265's interests by July 22, 2021. The award is subject to post-judgment interest. Pending the trial of the Oppression Action, 265 has security over the Property through its shareholdings in 266 and the Judgment.

[44] I conclude that 252 is entitled to a stay of the enforcement of the Judgment pursuant to s. 106 of the *CJA*.

Section 248(3) of the BCA

[45] Under s. 248(3) of the *BCA*, 252 must satisfy the three-part test from *RJR-MacDonald*;

- (i) that there is a serious issue to be tried;
- (ii) whether 252 will suffer irreparable harm if the relief is not granted; and
- (iii) the balance of convenience favours the granting of the relief.

[46] 252 argues that there is a serious issue to be tried as to whether 265 acted oppressively by:

- (a) reversing its position, which the parties agreed to at the arbitration, that its interest in the Property should be bought out to satisfy the Final Award;
- (b) taking an assignment of the DUCA Mortgage, then assigning it to a company under common control without 252's knowledge or consent in breach of the terms of the Joint Venture Agreement; and
- (c) commencing the Enforcement Application to collect on the Final Award while simultaneously preventing 252 from satisfying the Final Award.

[47] 252 argues that it had a reasonable expectation from 265's position before the Arbitrator, that 265 would agree to a sale of the Property to allow 252 to satisfy the Final Award. The failure of 265 to allow the sale of the Property, breached those reasonably held expectations and supports the claim under the oppression remedy.

[48] 265 states that there is no serious issue to be tried. 265 argues that the Final Award required 252 to purchase 265's interest by July 22, 2021. 252 did not purchase 265's interest by this date, and therefore it could have no reasonable expectation that 265 would consent to a sale after the deadline passed. 265 denies that it engaged in oppressive conduct and argues that it simply seeks to enforce the Judgment, which it is clearly entitled to do.

[49] I am satisfied that there is a serious issue to be tried. As noted above, 265 is insisting on enforcement of the Judgment but at the same time is not consenting to the sale of the Property which would generate sufficient funds to allow 252 to satisfy the Judgment. This is inconsistent with the agreement of the parties before the Arbitrator that the parties should separate their business relationship and that 252 would have the opportunity to purchase 265's 40% interest in the Property. Whether 265's approach is a breach of 252's reasonably held expectations, is an issue that is not frivolous or vexatious and meets the low threshold of a serious issue to be tried.

[50] 252 has established that it would suffer irreparable harm if the interim relief is not granted. 252 argues that it has no way to pay the Final Award without selling the Property. To allow 265 to enforce the Judgment when at the same time blocking the sale of 252's only asset would result in putting 252 out of business.

[51] The balance of convenience favours the granting of the interim relief. A stay will maintain the *status quo*. If the interim relief is granted, 252 will not be deprived of its business before the issues in the Oppression Action can be determined by the Court. There is no prejudice to 265 if the interim relief is granted. The Judgment will continue to accrue post-judgment interest. 265 has security over the Judgment through its shares in 266 and the Certificate of Pending Litigation it registered on title to the Property. In addition, 252 undertakes to proceed to an immediate trial date in the Oppression Action. 265 refused to agree to an early trial date. If in fact, there was any prejudice to 265, I would have thought 265 would have consented to an early trial date.

Clean Hands Doctrine

[52] 265 argues that 252 cannot seek equitable relief under either s.106 of the *CJA* or s.248(3) of the *BCA*, because it does not come to court with clean hands. The Arbitrator found that when 252 was seeking 265's involvement in the Property, it misrepresented the price of the Property. This is conceded by 252 and formed the basis for the punitive damage award made by the Arbitrator.

[53] The clean hands doctrine is not a principle of "inflexible application". To determine whether a person has "unclean hands", the impugned conduct must have an immediate and necessary relation to the equity sued for: *2324702 Ontario v. 1305 Dundas*, 2019 ONSC 1885, at paras. 18 and 20.

[54] The issue of the misrepresentation was litigated in the arbitration. The Arbitrator found that 252 had made a misrepresentation and awarded punitive damages of \$100,000. The issue before me is not whether there has been a misrepresentation, but whether 252 is entitled to a stay of the enforcement of the Judgment. The "equity sued for" in this proceeding is the stay of the Judgment and is separate from the issues litigated in the arbitration. There is no suggestion that 252 engaged in a misrepresentation or other deceitful conduct after the date of the Final Award.

[55] For the purposes of the relief sought in this proceeding, I am satisfied that the clean hands doctrine does not prevent 252 from seeking equitable relief.

DISPOSITION

[56] Stays are limited to very rare circumstances. I am satisfied that a stay is warranted in the circumstances of this case.

[57] I find that 252 is entitled to a stay under s.106 of the *CJA*. To allow execution of the judgment in these circumstances would amount to an injustice because it would be oppressive and/or an abuse of the process of the court. A stay will not cause an injustice to 265. The Judgment is appropriately secured by the Property, and it is continuing to accrue post-judgment interest.

[58] I am also satisfied that 252 is entitled to a stay under s.248(3) of the *BCA*. 252 has established that whether 265's conduct in not consenting to the sale of the Property is oppressive, is a serious issue to be tried and that it would suffer irreparable harm if the stay is not granted. The balance of the convenience favours the granting of the stay which will maintain the *status quo* pending the Court's determination of the Oppressive Action.

[59] Finally, it is my view that the "clean hands" doctrine does not apply in the circumstances of the motion for a stay. The issue of the misrepresentation was before the Arbitrator and is not an issue in the proceedings currently before me. There is no suggestion that 252 engaged in "unclean" conduct with respect to the enforcement of the Judgment.

[60] I grant the relief sought by 252 and stay the execution of the Judgment. However, this is without prejudice to the parties moving for directions with respect to a court-directed sale of the Property. A court-directed sale would seem to achieve the stated goals of the parties to separate their business interests and would allow 252 to satisfy the Final Award. If such a motion is brought, I remain seized.

[61] At the conclusion of the oral hearing, I asked counsel to meet in an attempt to reach an agreement on the costs of the motion. Counsel advise that they were unable to agree.

[62] 252 is successful on the motion and is presumptively entitled to its costs. 252 shall deliver its written costs submissions within 15 days of the date of this endorsement. 265 shall deliver its costs submissions in response within 15 days of receiving 252's written submissions. The written submissions of both parties are to consist of no more than three pages, excluding offers to settle, bill of costs and caselaw.

Date: February 14, 2023