

CITATION: George Armstrong Investments Ltd. v. Transport
Development Inc., 2024 ONSC 4721
COURT FILE NO.: C-6337/01
DATE: 2024-08-26

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)	
George Armstrong Investments Ltd. and)	William Armstrong, for the Plaintiffs
1239122 Ontario Inc. and William George)	
Armstrong, Estate Trustee for the Estate of)	
George Armstrong, deceased)	
	Plaintiffs)
– and –)	
)	
Transport Development Inc.)	No one appearing for the Defendant
	Defendant)
– and –)	
)	
Vale Canada Limited)	R. Muscolino, for the Garnishee
	Garnishee)
)	J. Duplessis, for the Intervener Party,
)	1447311 Ontario Ltd.
)	
)	HEARD: May 31, 2024

RULING ON MOTION TO DISMISS GARNISHMENT PROCEEDINGS

P.J. BOUCHER RSJ.

[1] Vale moves for dismissal on a with prejudice basis of the garnishment proceedings started by the plaintiffs. The plaintiffs’ consent to a without prejudice dismissal. The issue to be determined therefore is whether prejudice should attach to the dismissal.

Background

[2] On December 9, 2022, I released my decision on Vale’s motion for security for costs. I adopt here the background I provided in that decision and reproduce it below:

- a. Vale and the defendant, Transport Development Inc. (hereinafter “TDI”) were parties to a transportation contract dated January 25, 2001. TDI transferred its interests in the contract to 1447311 Ontario Ltd. (hereinafter “144”) less than a week after the contract was signed. In this proceeding 144 was granted intervener and party status pursuant to Kurke J.’s order

dated November 16, 2018. Counsel for 144 attended the motion but took no position on behalf of his client.

- b. Vale was subsequently directed by TDI to make to 144 the payments due under the contract, rather than to TDI.
- c. The late George Armstrong was the sole director of the corporate plaintiffs in this proceeding. William Armstrong was and continues to be a shareholder in TDI. He is also Estate Trustee for the late George Armstrong's estate.
- d. The plaintiffs sued TDI for payment of monies due under the contract with Vale. TDI consented to judgment against it in November 2001. The plaintiffs thereafter served a notice of garnishment on Vale. Vale advised the plaintiffs that TDI was no longer in their vendor file and that they did not have any active transactions with TDI.
- e. Nothing happened with respect to the notice of garnishment for approximately 11 years. In 2012 a receiver for TDI advised Vale that if it owed money to TDI, the funds needed to be directed to the receiver.
- f. In 2014 the plaintiffs obtained an order without notice to Vale, requiring Vale to attend for examinations. Vale successfully set aside this order on the basis it had been obtained because the plaintiffs had misled the court.
- g. Vale attended for examinations on several occasions since that time and produced over 20,000 documents, as ordered by the court. Vale has spent approximately \$65,000 to date with respect to this garnishment proceeding. It estimates a further \$20,000 will be required to complete the garnishment proceedings.
- h. A date for the garnishment hearing has not been set. Cullin J. is case managing the matter. Pursuant to her endorsement dated November 25, 2022, she ordered the plaintiffs to deliver by December 30, 2022, a document brief, an affidavit brief, and any new affidavits intended to be relied upon at the garnishment hearing. She directed the trial coordinator to set a further case management conference in January 2023.

[3] I found there was good reason to believe the garnishment proceeding was frivolous and vexatious. I ordered the plaintiffs to pay into court \$85,000 as security for costs within the garnishment proceeding and awarded Vale partial indemnity costs fixed at \$6,653.65. The security for costs has not been paid into court and the costs of the motion have not been paid.

[4] The parties attended before Cullin J. on May 19, 2023, for a case conference. At that time, the plaintiffs had not complied with her endorsement dated November 25, 2022. The parties appeared again before Cullin J. in a case conference on December 19, 2023. Cullin J. noted

the plaintiffs had still not complied with her endorsement. She also noted the plaintiffs indicated they did not wish to file any additional material.

The Law

[5] When a party fails to comply with an interlocutory order, the court may, among other things, dismiss the party's proceeding: r. 60.12 of the *Rules of Civil Procedure*. This remedy is appropriate if the court is satisfied a litigant has consistently and deliberately flouted court orders: *Ashley v. Reinhard*, 2015 ONCA 164 at paras. 2-5.

[6] Where a party defaults in giving the security required by an order for security for costs, the defaulting party's proceedings may be dismissed: r. 56.06. Before dismissing the proceedings, the court must consider any efforts made by the plaintiff to comply with the order: *Goldman v. Powers*, 2018 ONSC 4484 at para. 15.

[7] Proceedings may be dismissed on procedural grounds, such as failure to comply with court orders, without regard to the merits of the case: *Bottan v. Vroom*, [2001] O.J. NO. 2737, 106 A.C.W.S. (3d) 532 at para. 26, *aff'd* 2002 CanLII 41691 (ONCA).

[8] Courts have the inherent jurisdiction to dismiss proceedings for delay, because there is a "strong public interest in promoting the timely resolution of disputes": *Marché D'Alimentation Denis Theriault Ltée v. Giant Tiger Stores Limited*, 2007 ONCA 695 at para. 25.

Positions of the parties

[9] Vale submits these garnishment proceedings should be dismissed with prejudice due to significant and unexplained delays on the part of the plaintiffs. In addition, Vale argues the plaintiffs have failed to comply with disclosure orders, the order for security for costs as well as my costs order. Vale submits this substantially impacts the fairness and integrity of the proceedings.

[10] The plaintiffs submit the garnishment proceedings expired on May 3, 2024, and they have not asked that they be renewed. However, the plaintiffs argue they may at some point bring another motion to seek the funds from Vale.

Analysis

[11] These garnishment proceedings have been before the court for about twenty-three years. Although they have not renewed the notice of garnishment which expired in May of this year, the plaintiffs dispute a dismissal with prejudice. This is because the plaintiffs continue to assert an ability and a desire to obtain receivables from Vale, though at some later date.

[12] Vale succeeds on each of the grounds plead for dismissal with prejudice. Considering these grounds collectively, anything short of a dismissal with prejudice would bring the administration of justice into disrepute.

[13] The plaintiffs have refused to comply with Cullin J.'s orders, made almost two years ago. The orders clearly set out what the plaintiffs needed to do before the garnishment hearing could take place. The court dedicated precious time to actively case manage this proceeding. The plaintiffs have flouted these efforts and Cullin J.'s orders.

[14] The plaintiffs have also, without explanation, failed to post the security for costs ordered almost two years ago. There is also no explanation for their failure to pay the costs I ordered on January 17, 2023.

[15] There is a strong public interest in the timely resolution of disputes. Court time has been dedicated to this garnishment proceeding over decades. The plaintiff's continuing refusal to abide by the court's orders in this case amounts to an abuse of the court's process.

Conclusion

[16] For these reasons, Vale's motion is granted. The garnishment proceedings are accordingly dismissed with prejudice.

[17] If the parties cannot agree on costs, Vale may within 15 days of the date of these reasons deliver submissions on costs of no more than 2 pages, not including any offers to settle or bill of costs. The plaintiffs will have 30 days from the date of these reasons to deliver their submissions on costs of no more than 2 pages, not including any offers to settle or bill of costs. There will be no reply.

The Honourable Mr. Justice P.J. Boucher

Released: August 26, 2024

CITATION: George Armstrong Investments Ltd. v. Transport
Development Inc., 2024 ONSC 4721
COURT FILE NO.: C-6337/01
DATE: 2024-08-26

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

George Armstrong Investments Ltd. and 1239122
Ontario Inc. and William George Armstrong, Estate
Trustee for the Estate of George Armstrong, deceased
Plaintiffs

– and –

Transport Development Inc.
Defendant

– and –

Vale Canada Limited
Garnishee

**RULING ON MOTION TO DISMISS
GARNISHMENT PROCEEDINGS**

P.J. Boucher RSJ.

Released: August 26, 2024