COURT OF APPEAL FOR ONTARIO

CITATION: Ye v. Turton, 2025 ONCA 89
DATE: 20250205
DOCKET: M55663 (COA-24-CV-0782)

Fairburn A.C.J.O., Copeland and Monahan JJ.A.

BETWEEN

Zhizhao Ye

Responding Party/Appellant/Applicant

and

F. Scott Turton* and The Bank of Nova Scotia

Moving Party*/Respondents

F. Scott Turton, acting in person

Stephen R. Jackson and Anna Johnson, for the responding party/appellant

No one appearing for the respondent The Bank of Nova Scotia

Heard: January 30, 2025

REASONS FOR DECISION

[1] The responding party/appellant[1] brought an application, under rule 14.05 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, for a declaration of an interest in land. Specifically, the appellant sought a declaration of the appropriate allocation

[1] For ease of reference we refer to the parties as the appellant and the respondent for the balance of these reasons.

of surplus funds between the second and third mortgagees on a property after it was sold under power of sale by the first mortgagee for an amount in excess of what the first mortgagee was owed. The respondent is the second mortgagee.[2] The appellant is the third mortgagee.

[2] The application judge explained in her endorsement that the property owner (mortgagor) was entitled to notice of the application. She also explained that the evidentiary record filed by the appellant in support of the application was insufficient to grant the relief sought because there was no evidence of the value of the third mortgage as of the closing date of the sale of the property under power of sale.[3]

[3] The application judge dismissed the application (without costs), without prejudice to the appellant's right to bring a fresh application, subject to two requirements: (i) that the appellant give notice of the fresh application to the owner of the property; and (ii) that the appellant provide additional evidence of the value of the third mortgage at the closing date of the sale of the property.

[4] The appellant appealed to this court from the application judge's order.

---

[2] The appellant contests the validity of the second mortgage. But that issue is not germane to the motion to quash.

[3] The application judge also expressed concern about the sufficiency of the evidentiary record in relation to the respondent's second mortgage. But those concerns do not impact the motion to quash the appeal.

[5] The respondent brought a motion to quash the appeal on the basis that this court lacks jurisdiction to hear the appeal. The respondent argued that the application judge's order was interlocutory, and thus, the appeal lies with leave to the Divisional Court, pursuant to s. 19(1)(b) of the *Courts of Justice Act*, R.S.O. 1990, c. C43.

[6] The appellant argued that the application judge's order was final because she dismissed the application. He argued that this makes her order final, regardless of what other proceedings he may be entitled to bring.

[7] After hearing submissions on the motion, we quashed the appeal with reasons to follow. These are our reasons.

[8] An order is interlocutory where it does not determine "the real matter in dispute between the parties – the very subject matter of the litigation – or any substantive right": *Drywall Acoustic Lathing Insulation Local 675 Pension Fund v. SNC Lavalin Group Inc.*, 2020 ONCA 375, at para. 16; *Paulpillai Estate v. Yusuf*, 2020 ONCA 655, at para. 16; *Heegsma v. Hamilton (City)*, 2024 ONCA 865, at para. 12.

[9] The application judge's order is interlocutory. It is clear from the wording of the order, the application judge's reasons, and the nature of the proceedings, that the order determines no substantive rights of the appellant. The appellant remains free to file a fresh application seeking the same relief as the first application. The

only requirements are that he give notice to the property owner and that he provide additional evidence.

[10] The appellant relies on this court's decision in *Buck Bros. Ltd. v. Frontenac Builders Ltd.* (1994), 19 O.R. (3d) 97 (C.A.) in support of his contention that the application judge's order is a final order because she dismissed the application.

[11] The appellant's reliance on *Buck Bros.* is misplaced, both in terms of the legal proposition it stands for, and the facts in *Buck Bros.* that led to the conclusion that the order in that case was final.

[12] *Buck Bros.* involved an appeal from a motion judge's order holding that the conditions in a joint venture agreement for a dispute about payment to be submitted for arbitration had been satisfied. Therefore, the dispute had to be resolved through arbitration, rather than through a court proceeding. This court held that the order in *Buck Bros.* was a final order because the order was a final determination of the matter in dispute before the court – namely, whether the conditions had been satisfied to submit the matter to arbitration rather than to the court. It did not matter that the underlying dispute about payment had not yet been resolved and would be resolved in the arbitration proceeding.

[13] In contrast, in this case, although the application was dismissed, the order made was without prejudice to the appellant's right to bring a fresh application seeking the same relief, in the same forum, as the original application. As such,

the application judge's order had no impact on the matter in dispute in the application – whether either the appellant or the respondent are entitled to any portion of the surplus funds after the property was sold under power of sale. The application judge's order determined no substantive right of the appellant in relation to his entitlement in that regard.

[14] *Buck Bros.* does not stand for the proposition that every time an order in relation to an application contains the words "the application is dismissed" it is a final order. While it will generally be the case that where an application is dismissed, the order will be final, it is not invariably so. Rather, as the jurisprudence of this court has repeatedly affirmed, to determine if an order is final or interlocutory, the appellate court must examine the terms of the order, the motion or application judge's reasons, the nature of the proceedings giving rise to the order, and any other relevant contextual factors: *Paulpillai Estate*, at para. 16; *Prescott & Russell (United Counties) v. David S. Laflamme Construction Inc.*, 2018 ONCA 495, 142 O.R. (3d) 317, at para. 7; *Beaver v. Hill*, 2019 ONCA 520, at paras. 13-15.

[15] We note that the effect of the application judge's order is the same as if she had chosen to adjourn the application *sine die*, and directed the appellant to give notice to the property owner and to supplement the evidentiary record on the application regarding the value of the third mortgage as of the closing date of the sale of the property. The fact that the application judge chose to dismiss the

application without prejudice to the appellant's right to bring a fresh application does not change the effect of her order – it determined no substantive rights of the appellant. We note, in particular, that nothing in the order of the application judge limited the substance of the claim the appellant may advance in the fresh application.

[16] The appeal is quashed. The moving party/respondent is entitled to his costs of the motion and the appeal in the amount of $6,500, inclusive of disbursements and applicable taxes.

"Fairburn A.C.J.O."
"J. Copeland J.A."
"P.J. Monahan J.A."