

COURT OF APPEAL FOR ONTARIO

CITATION: Jodi L. Feldman Professional Corporation v. Foulidis, 2025
ONCA 150
DATE: 20250226
DOCKET: M55754 (COA-24-CV-0538)

Gillese J.A. (Motions Judge)

BETWEEN

Jodi L. Feldman Professional Corporation

Plaintiff (Respondent/
Responding Party)

and

Lynne Catherine Foulidis

Defendant (Appellant/
Moving Party)

Maureen Whelton, for the appellant/moving party

Sean N. Zeitz and Cora Madden, for the respondent/responding party

Heard: February 12, 2025

ENDORSEMENT

[1] Ms. Foulidis moves for an extension of time to perfect her appeal. The responding party opposes the motion on the basis that the moving party does not meet the criteria for an extension of time.

[2] In my view, given the lack of merit of the putative appeal, the justice of the case requires that the motion be dismissed.

Background in Brief

[3] The responding party represented the moving party in a highly contentious, complex, and lengthy divorce proceeding. When the moving party did not pay the responding party's invoices for the legal services rendered, the responding party sued her for approximately \$665,000. The moving party's counterclaim alleging negligence was discontinued, with costs. The matter proceeded to a six-day trial (rather than an assessment) with both the retainer and quantum in dispute. The trial judge awarded the responding party approximately \$481,000, all inclusive, on account of unpaid legal fees, and costs of the action of just over \$240,000.

[4] On the issue of the retainer, the moving party contended that the parties had entered into an oral agreement under the terms of which her legal fees would be based on the equalization payment to be obtained from her ex-husband and that her ex-husband would be responsible for up to 80% of the amount owed. The responding party contended that a written retainer agreement had been initially entered into but had gone missing. Based on the evidence of independent witnesses that the initial written retainer agreement had existed and later retainer agreements that the moving party had signed, the trial judge rejected the moving party's evidence and found she had signed the initial retainer. He also rejected the moving party's evidence and submissions in respect of the services that had been provided, pointing out the many endorsements in the record which bore out that

the “exceedingly difficult” litigation had required the services provided by the responding party.

The Relevant Legal Principles

[5] The test on a motion to extend time to perfect an appeal is well-settled. The overarching principle is whether the justice of the case requires that the extension be given. While each case depends on its own facts, the court is to take into account all relevant considerations, including: (1) whether the moving party has demonstrated a continuing intention to appeal during the relevant period; (2) the length of, and explanation for, the delay; (3) the prejudice to the responding party caused, perpetuated, or exacerbated by the delay; and (4) the merits of the putative appeal: see, for example, *Codina v. Canadian Broadcasting Corporation*, 2020 ONCA 116, at para. 2.

[6] However, lack of merit alone is a sufficient basis on which to deny the requested extension of time to perfect: *Codina*, at para. 7. When the court considers the merits of the putative appeal on such a motion, it is not determining whether the putative appeal would succeed. Rather, the court is considering whether the appeal has so little merit that the court can reasonably deny the moving party the important right of an appeal: *Issai v. Rosenzweig*, 2011 ONCA 112, 277 O.A.C. 391, at para. 10.

Analysis

[7] The legal principles that govern this motion make clear that the moving party bears the obligation to justify the requested indulgence. On the record, I am satisfied that the moving party meets its burden in respect of the first three considerations.

[8] The appeal was to have been perfected by December 9, 2024. The motion was brought in late January 2025, thus the period of delay was just under two months. The record shows that counsel for the moving party took steps during that period to perfect. In my view, that evidence adequately demonstrates a continuing intention to appeal. While the parties differ on the reasons for the delay, the fact that the moving party retained new counsel for the appeal explains some of the issues surrounding the delay. As for the third consideration, counsel for the responding party candidly acknowledges that the prejudice his client will suffer is limited to that which flows from the appeal process and not from the period of delay.

[9] Consequently, in my view, this motion turns on the merits of the putative appeal. In that regard, I see virtually no chance of success.

[10] There are many grounds of appeal set out in the moving party's notice of appeal. The alleged legal errors can be summarized as the trial judge having erred by (1) relying on *Boucher et al. v. Public Accountants Council for the Province of Ontario et al.* (2004), 71 O.R. (3d) 291(CA) in fixing the value of the legal services

rendered and (2) failing to apply the governing legal principles in *Cohen v. Kealey & Blaney* (1985), 26 C.P.C. (2d) 211 (Ont. C.A.). The balance of the grounds of appeal relate to alleged errors in the trial judge's factual findings on matters such as the alleged oral retainer agreement.

[11] There is nothing in the two alleged legal errors. The trial judge did not apply *Boucher* in deciding the matters in issue. He simply noted, at para. 54 of his reasons, that when assessing the claim, he was to consider what was fair and reasonable. Importantly, this statement followed immediately after the trial judge's express stipulation, at para. 53 of his reasons, that he was required to fix the value of legal services based on the nine factors set out in *Cohen*. Even a cursory review of the trial judge's analysis shows that he considered those factors.

[12] The balance of the grounds of appeal amount to attacks on the trial judge's findings of fact. The trial judge gave detailed, cogent reasons for the impugned findings, many of which were based on independent evidence and a rejection of the moving party's evidence based on credibility concerns. The moving party did not point the court to any palpable and overriding errors in respect of the impugned factual findings.

[13] In these circumstances, the putative appeal has so little merit that the justice of the case warrants dismissal of the motion.

Disposition

[14] Accordingly, the motion is dismissed with costs to the responding party of \$14,900, all inclusive.

“E.E. Gillese J.A.”