

Jason Edmund Dearborn

and

The Director of the Financial and Consumer Affairs Authority

Fiat

[1] The applicant appellant applies for stays of orders of different panels established under the administration of the Director of the Financial and Consumer Affairs Authority (“Authority”) pending appeals of the orders to the Court. The Authority filed a Statement of Allegations alleging the applicant and others contravened several sections of *The Securities Act, 1988*, SS 1988-89, c S-42.2 by making misleading or untrue statements in respect of trading in securities.

[2] The applicant claims the determinations under appeal in CACV2707 and CACV2736 will affect the disclosure requirements of the respondent in its investigations and the decision should be stayed until the issue of full disclosure is determined by the Court. He further claims the decision under appeal in Court file CACV2737 could trigger a stay of proceedings if the Court were to find there was a breach of Parliamentary privilege.

[3] At the outset, I must comment on how the matter unfolded before me in Chambers. Both parties were represented by counsel. No brief of law or memorandum was filed by either party. Each party filed an affidavit, one from the applicant himself and one from an investigator employed with the Securities Division of the Authority. The applicant’s affidavit alleged: a lack of full disclosure; an opinion the investigation was “launched without adherence to due process, a sworn complaint, nor probable grounds”; and a statement the staff of the Authority breached Parliamentary privilege. The attached exhibits set out the notices of appeal and the respective decisions being appealed from. All materials were exactly the same on each of the three Court files. The affidavit of the investigator on behalf of the respondent says: disclosure was provided; no document or thing was withheld from disclosure; some documents requested by the applicant do not exist; reference to his appointment as a special constable; a statement as to procedure including when argument or submissions were made by Authority staff; and a legal opinion the office did not have the power to prosecute offences under *The Securities Act, 1988*.

[4] The applicant brought his application for a stay pursuant to Rule 15 of *The Court of Appeal Rules* and s. 11(8) of *The Securities Act, 1988*. The application on the basis of Rule 15 is without merit. The applicant misconstrues the operation of Rule 15 as the rule does not impose a general stay of proceedings bringing to a halt all proceedings in an action as would an order of a

court directing a stay of all proceedings. The Rule imposes a stay of only one proceeding: the execution of the judgment appealed from (see *Canadian Pioneer Petroleum Inc. v Federal Deposit Insurance Corp.*, [1984] 3 WWR 765 (Sask CA) and *Saskatchewan Union of Nurses v Sherbrooke Community Centre* (1996), 141 Sask R 161 (CA)).

[5] I raise the issue of a lack of supporting legal material because of course it is the usual practice when counsel are involved on a chambers matter to provide a memorandum or brief of law setting out briefly the facts and the legal argument even if there is no such requirement in Rule 48(6). Counsel should follow this practice. The failure to provide a brief here leads to, in my view, a less than complete picture of the circumstances surrounding the stay applications.

[6] The applicant says in his notice of motion the determinations of CACV2707 and CACV2736 will affect the disclosure requirements of the respondent in their matter against the applicant and that no valid order can issue from the Commission until full disclosure is provided—which cannot be determined until there is a disposition of these appeals. He says the matter to be determined in CACV2737 could trigger an immediate stay of the proceedings before the Commission on the basis of a breach of Parliamentary privilege. Interspersed with his argument was a new application, made verbally, to strike sections of the affidavit filed by the respondent. Perhaps an appropriate memorandum or brief of law would have caused counsel to approach this issue in the correct manner.

[7] He then proceeded to make argument, properly setting out the test for the granting of the stay of proceedings pending an appeal which I note is the same as for the granting of an injunction (*H.S. v C.S.*, 2006 SKCA 93 at para 4, 285 Sask R 280). It is the three-part test established by the Supreme Court of Canada in *Manitoba (Attorney General) v Metropolitan Stores Ltd.*, [1987] 1 SCR 110 and *RJR-MacDonald Inc. v Canada (Attorney General)*, [1994] 1 SCR 311. The questions to be asked are: is there a serious question to be tried, would the applicant suffer irreparable harm but for the stay, and where does the balance of convenience lie?

[8] The applicant dealt with each of the questions. However, the respondent argued the Court ought not to deal with issues arising from an action or a matter piecemeal. The appropriate time for dealing with these matters is after a decision by the Authority on the merits.

[9] Not addressed by either party was the general recognition the power to impose a stay of proceedings is discretionary exercised on the basis of justice and appropriateness: see *Tekarra Properties Ltd. v Saskatoon Drug and Stationary Co.* (1985), 17 DLR (4th) 155 (Sask CA). As to an application for a stay in the context of an investigation under *The Securities Act, 1998*, see *101114386 Saskatchewan Ltd. v Saskatchewan (Financial and Consumer Affairs Authority)*, 2013 SKCA 134.

[10] The applicant's application argues only the issues of disclosure and Parliamentary privilege. However, the notice of appeal in CACV2707 also raises the issue of jurisdiction and the imposition of an administrative penalty against the staff of the Authority and the issue of jurisdiction to award compensation or damages to the applicant. The notice of appeal in CACV2736 also raises the issue of jurisdiction to hold an in-camera hearing; mischaracterization of evidence; the issue of the power of a special constable; an allegation excess of jurisdiction by withholding evidence; the alleged failure in law to consider and weigh all relevant evidence

impartially, fairly and in good faith; the failure to determine all issues before the Authority; and the failure to produce sufficient and adequate reasons. The notice of appeal in CACV2737 raises not only the issue of Parliamentary privilege but also alleges a breach of the principles of natural justice and procedural fairness by dismissing the application for stay without hearing argument or evidence from the applicant and again raising the issue of a failure to consider and weigh the relevant evidence impartially, fairly and in good faith, and finally again raising the issue of the sufficiency of reasons.

[11] All of this leads, in my view, to deciding the balance of convenience goes to support the respondent's argument these issues should not be dealt with piecemeal. In any event, I am not persuaded the applicant will be prejudiced pending the appeal. It will clearly be in his hands for the most part to proceed with the appeals expeditiously and he ought not to be unduly delayed.

[12] The applications are dismissed. Each party is to bear its own costs. Given the simple triplication of materials, I assume counsel for the applicant will treat the matter as one application. I further expect that all three appeals filed will be proceeded with and heard at the same time.

“Lane J.A.”

Lane J.A.

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