CITATION: White v. 123627 Canada Inc. (Algonquin Petro Canada), 2014 ONSC 6234
COURT FILE NO.: CV-11-5283
DATE: 2014/10/30

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: Carrie White, Plaintiff

AND:

123627 Canada Inc., carrying on business as Algonquin Petro Canada, Breault Inc., and Pine Creek Enterprises Inc., Defendants

BEFORE: Valin J.

COUNSEL: Patrick J. Poupore, for the Plaintiff

Avi Cole, for the Defendants 123627 Canada Inc. and Breault Inc.

HEARD: October 23, 2014

ENDORSEMENT

[1] This is a motion for leave to appeal from the order of Ellies J. dated May 26, 2014, removing the firm Wallbridge, Wallbridge (the "law firm") as the lawyers of record for the plaintiff.

[2] Notwithstanding the fact that the order has not been stayed, counsel from the law firm appeared for the plaintiff on the motion. Although I was concerned about the propriety of counsel's appearance in the face of the order which is the subject of the motion for leave, counsel for the defendants took no position on the issue.

[3] Rule 62.02(4) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, sets out the test for granting leave to appeal:

> Leave to appeal shall not be granted unless,
>
> (a) there is a conflicting decision by another judge or court in Ontario or elsewhere on the matter involved in the proposed appeal and it is, in the opinion of the judge hearing the motion, desirable that leave to appeal be granted; or

> (b) there appears to the judge hearing the motion good reason to doubt the correctness of the order in question and the proposed appeal involves matters of such importance that, in his or her opinion, leave to appeal should be granted.

[4] Rule 62.02(4) establishes a high threshold that is clearly designed to narrow the number of interlocutory decisions that qualify for appellate review.

[5] Under the first part of the test in rule 62.02(4), there must be a conflicting decision in Ontario or elsewhere on the matter involved in the proposed appeal and it must be desirable that leave be granted.

[6] Counsel for the law firm argued that the decision of the New Brunswick Court of Appeal in *Canada Post Corp. v. Euclide Cormier Plumbing and Heating Inc.*, 2008 NBCA 54, 334 N.B.R. (2d) 211, is on point in this case with similar facts and issues. Although that case was argued on the motion, the motion judge made no reference to it in his decision. The motion judge relied in part on the decision of the Divisional Court in *Sangaralingam v. Sinnathurai*, 2011 ONSC 1618, 105 O.R. (3d) 714. The facts in that case were not as close to the facts in this case as were the facts in *Canada Post*.

[7] The granting of an order disqualifying a law firm as counsel of record for a party to an action involves the exercise of judicial discretion. With respect to the conflicting decision requirement in rule 62.02(4)(a), it is not enough that a judge exercised discretion in a different manner from other judges in different circumstances. An exercise of discretion that leads to a different result because of different circumstances does not meet the requirement for a conflicting decision: see *Comtrade Petroleum Inc. v. 490300 Ontario Ltd.* (1992), 7 O.R. (3d) 542 (Div. Ct.). There must be a difference in the principle upon which the court acted: see *Sutherland v. Via Rail Canada Inc.*, 2012 ONSC 6014, [2012] O.J. No. 5022 (Div. Ct.). Counsel for the law firm did not establish that the motion judge relied on a different principle in formulating his decision.

[8] Even if I am incorrect in my determination that counsel for the law firm has failed to establish that there is a conflicting decision on the matter involved in the proposed appeal, I am not convinced that it is desirable that leave be granted. Except in circumstances where a judge fails to exercise his or her discretion judicially, my sense is that leave to appeal an order removing a law firm as counsel of record would rarely, if ever, pass the "desirable" test.

[9] Under the second part of the test, the court hearing the motion for leave must be satisfied that there is good reason to doubt the correctness of the order, and the proposed appeal must raise matters of such importance that leave should be granted.

[10] An appeal is from the result of the order, and not the reasons. The leave judge must ask whether there is good reason to doubt the correctness of the result. If the result appears to be correct, even if there is an error in the reasons or the reasons are inadequate, then leave

to appeal should be denied: see *Tarion Warranty Corp. v. Brookgreene Estates Inc.*, [2006] O.J. No. 1923 (S.C.), at para. 3.

[11] On the facts of this case, I have no reason to doubt the correctness of the decision of the motion judge. His decision is thorough and well-reasoned. He reviewed the facts and applied the proper legal principles to the facts and issues on the motion. He also correctly considered the factors listed by the Supreme Court of Canada when a judge is faced with a motion to remove a law firm as counsel of record in circumstances where the law firm is in possession of inadvertent disclosure of privileged documents: see *Celanese Canada Inc. v. Murray Demolition Corp.*, 2006 SCC 36, [2006] 2 S.C.R. 189.

[12] In addition, I am not satisfied that the proposed appeal involves matters of such importance that leave should be granted. While the issue raised is undoubtedly important to the parties to this action, I conclude it lacks general legal importance. General importance relates to matters of public importance and matters relevant to the development of the law and the administration of justice: see *Greslik v. Ontario Legal Aid Plan* (1988), 65 O.R. (2d) 110 (Div. Ct.). In the face of the ruling of the Supreme Court of Canada in *Celanese*, it cannot be said that the issue in the proposed appeal warrants further resolution by a higher court because it affects the development of the law or the administration of justice.

[13] The motion is therefore dismissed. The defendants 123627 Canada Inc. and Breault Inc. are entitled to their costs of the motion on the partial indemnity scale. Those costs are hereby fixed in the amount of $5,000.00, inclusive of disbursements and HST, and are payable by the plaintiff within 60 days.

The Honourable Mr. Justice G. Valin

Date Released: October 30, 2014