NOVA SCOTIA COURT OF APPEAL
Citation: *Lavy v. Hong*, 2018 NSCA 46

Date: 20180528
Docket: CA 474648
Registry: Halifax

Between:

Danny Lavy, Star Elite Inc. and Elite Group Inc.

Appellants

v.

Shae Hong and Hong and Co.

Respondents

Judges:	Beveridge, Van den Eynden and Derrick, JJ.A.
Appeal Heard:	May 28, 2018, in Halifax, Nova Scotia
Held:	Leave is granted but the appeal is dismissed, per reasons for judgment of the Court
Counsel:	Michelle Awad, Q.C. and Ian Dunbar, for the appellants Roderick Rogers, Q.C. and Sara Nicholson, for the respondents

By the Court (Orally):

[1] This is an appeal of an interlocutory order. Leave is required. Although we are satisfied leave should be granted, we are unanimously of the view that the appeal should be dismissed.

[2] The parties are engaged in a shareholder dispute. The respondents filed an application in the court below seeking oppression remedies. That application is scheduled to be heard on June 11 to 14, 2018.

[3] The setting of the dates and the prehearing steps were agreed to by the parties well in advance. However, the appellants changed course in late February 2018 when they filed a motion to convert the application into an action, or alternatively, to obtain new hearing dates for the application and revised pre-hearing directions.

[4] Justice Jamie Campbell heard this motion on March 6, 2018. He rendered a written decision on March 13, 2018 (*Hong v. Lavy*, 2018 NSSC 54). The resulting order was issued on March 26, 2018. The appellants' requests to convert and for alternative relief to delay were denied. On appeal, the appellants only challenge the denial to adjourn the hearing dates and adjust the prehearing steps.

[5] The decision to grant an adjournment or adjust prehearing steps is discretionary. A motion judge's decision is entitled to deference. This Court will only intervene if there was an error in principle or the decision gave rise to an injustice (see *Caterpillar Inc. v. Secunda Marine Services Ltd*., 2010 NSCA 105, para. 5). We are satisfied that neither occurred here.

[6] The motion judge was required to consider and balance the interests of all parties when deciding whether to grant the adjournment and adjust the dates for completion of prehearing steps (see *Moore v. Economical Mutual Ins*. (1999), 177 N.S.R. (2d) 269 (C.A.) at para. 33).

[7] We reject the appellants' complaints that the motion judge failed to consider and weigh any prejudice to the appellants and improperly relied on findings made by another judge in a separate contested interlocutory matter the parties had earlier been involved in (2017 NSSC 329). We are satisfied, on this record, that Justice Campbell considered and properly balanced the competing interests.

[8] He was clearly alive to the issue of prejudice, including the appellants' document production concerns and the related time pressures to complete the remaining prehearing steps. And, although the respondents were firm on their position that the hearing dates should not be adjourned, their counsel advised the motion judge of their willingness to adjust some dates for prehearing steps. It was obvious that some adjustment would be necessary as the respondents had not met their March 5th filing date for affidavits.

[9] The motion judge reviewed in detail the chronology of the proceedings and the respective positions of the parties at each step. He found that the parties agreed to the deadlines (hearing date and prehearing steps) with knowledge of the nature and scope of the matters in dispute.

[10] Although he referred to the findings made in the other interlocutory proceedings, which were not specifically binding upon him or, ultimately, the judge hearing this dispute on its merits, it was part of the background he appropriately reviewed. The motion judge did not expressly mention the potential limitation on the use of those prior findings. However, he was aware of the issue, as the appellants specifically addressed this point during oral submissions. The respondents did not suggest to the contrary. Furthermore, his decision is amply supported on the record, without reliance on those findings.

[11] We see no error in principle or injustice. Consequently, this Court has no basis to interfere with this discretionary decision.

[12] The appeal dismissed with costs to the respondents of $3,000, inclusive of disbursements and payable forthwith.

Beveridge, J.A.

Van den Eynden, J.A.

Derrick, J.A.