

2015 ONSC 1808  
Ontario Superior Court of Justice

Gledhill v. Better Living Homes, Inc.

2015 CarswellOnt 3852, 2015 ONSC 1808, 252 A.C.W.S. (3d) 75

**Mark Gledhill, Plaintiff and Better Living Homes, Inc. ("BLH") and Jeffrey Rana ("JR"); Dwayne Whitford ("DW"); Toronto Police Services Board ("TPSB"); Det. Debbie Harris #4847, PC 31 Brent Larmour #10393, PC Phillip Romain #5394; PC Christopher Drake #9176, PC Ronald MacKAY #99680, PC11 Daniel Doyle #8799, Det. Alexander Wallace #9800, Det. C. Ricci #5156, Sgt. J. Douglas #1060, PC1 Matthew Dodds #10295, PC1 D. Balachor #99798 ("MOS"); Landlord and Tenant Board ("LTB"); Jean-Paul Pilon ("JPP"), Defendants**

E.M. Morgan J.

Heard: March 19, 2015  
Judgment: March 20, 2015  
Docket: CV-14-499101

Counsel: Mark Gledhill, for himself

Timothy **Duggan**, for Better Living Homes, Inc., Jeffrey Rana, and Dwayne Whitford

Damian Homich, for Toronto Police Services Board, Det. Debbie Harris, PC Brent Larmour, PC Phillip Romain, PC Christopher Drake, PC Ronald MacKay, PC Daniel Doyle, Det. Alexander Wallace, Det. C. Ricci, Sgt. J. Douglas, Matthew Dodds, PC D. Balachor

Farzin Yousefian, for Landlord and Tenant Board and Jean-Paul Pilon

Subject: Civil Practice and Procedure

#### Related Abridgment Classifications

For all relevant Canadian Abridgment Classifications refer to highest level of case via History.

#### Civil practice and procedure

[XVI](#) Disposition without trial

[XVI.3](#) Stay or dismissal of action

[XVI.3.g](#) Miscellaneous

#### Headnote

##### **Civil practice and procedure --- Disposition without trial — Stay or dismissal of action — Miscellaneous**

Judge issued order staying proceedings and ordered plaintiff to pay certain defendants \$500 in costs — Judge indicated that it appeared that action was simply repetition of claims in small claims court action — Proceedings were stayed until final determination of small claims court action and payment by plaintiff of any costs orders that might be made against him in small claims court proceedings and in this proceeding, or further order — Plaintiff brought unsuccessful motion to set aside stay of proceedings — Motion judge confirmed that small claims court action was complete and that costs of that action and those ordered by judge who issued order staying proceedings had not yet been paid by plaintiff — Motion judge ordered plaintiff to pay \$800 in costs to certain defendants — Plaintiff brought motion to set aside stay of proceedings — Motion dismissed — Costs already ordered against plaintiff had to be paid before any further consideration of stay took place — Plaintiff was to pay costs in aggregate amount of \$2,300 — Plaintiff was not to bring any further motion to lift or vary stay of proceedings without first

paying costs ordered in small claims action, costs ordered by judge who issued order staying proceedings, costs ordered by motion judge, and costs ordered herein.

MOTION by plaintiff to set aside stay of proceedings.

***E.M. Morgan J.:***

1 For the second time in six months, the Plaintiff seeks to set aside a stay of proceedings in this action.

2 On May 1, 2014, Corbett J. issued an order staying the proceedings and ordered the Plaintiff to police defendants \$500 in costs. His endorsement reads, in its operative part:

It appears (although it is not certain) that this action is simply a repetition of the claims in the small claims court action. However, I decline to exercise my discretion to dismiss this proceeding outright, without the benefit of argument and a detailed analysis of the claims in this proceeding and the small claims court proceeding. Rather, I order this proceeding stayed until:

(a) the final determination of the small claims court action; and

(b) payment by the Plaintiff of any costs orders that have been or hereafter may be made against him in the small claims court proceedings and in this proceeding; or

(c) further order of any judge of this court.

3 On October 10, 2014, the Plaintiff brought a motion virtually identical to the present one. In her endorsement dismissing the motion, Pollak J. confirmed that the small claims court action was complete and that the costs of that action and those ordered by Corbett J. had not yet been paid by the Plaintiff. She ordered the Plaintiff to pay \$800 in costs to the Better Living Homes defendants.

4 The Plaintiff confirmed at the hearing today that he has not paid the costs awarded against him in the small claims court action or those ordered against him by Justices Corbett and Pollak.

5 As he did before Pollak J., the Plaintiff seeks to set aside the stay ordered by Corbett J. His position is that Corbett J. was wrong, and that the present action is not simply a repetition of the small claims action that preceded it. He also argues that Pollak J. was wrong in failing to lift the stay because he had not paid the costs of the small claims action or those ordered by Justice Corbett.

6 The Plaintiff did not appeal either the order of Corbett J. or that of Pollack J., and did not move in a timely fashion (or at all) to set either of those orders aside. Rather, he has brought yet another motion seeking to lift the stay. He argues that the third term of Justice Corbett's order — i.e. that the stay is in place until "further order of any judge of this court" — authorizes him to bring a motion at any time to seek such an order.

7 At the hearing, the Plaintiff advised me that if I do not lift the stay he plans on bring yet another motion to do so after my ruling. Indeed, he stated quite aggressively that he plans to continue to do so until he finds a judge that agrees with him that the stay never should have been imposed.

8 Justice Corbett included the third term of the order as a matter of course; a judge of this court always has the possibility of lifting a stay imposed at an earlier motion if, in the latter judge's view, the circumstances are right. That, however, does not authorize a litigant to bring motions serially in search of the answer he wants.

9 Pollak J. refused to lift the stay because, among other things, the Plaintiff had not paid the costs referenced by Corbett J. In doing so, she was certainly within the scope of her authority and she correctly interpreted and applied the endorsement of Corbett J.

10 It is the Plaintiff's view that Corbett J. should not have ordered any costs because his stay of proceedings should never have been issued in the first place. That, of course, does not address the non-payment of the small claims court costs, about which Corbett J. expressed concern and which still have not been paid.

11 The Plaintiff's point also misapprehends Justice Corbett's decision, which was based on the fact that the Plaintiff had not provided an analysis of how the present case actually differs from the preceding small claims court case. Regardless of whether or not there were substantive differences between the two cases, it is obvious from Justice Corbett's endorsement that the Plaintiff had not provided him with an analysis that supported such a determination.

12 In my view, the costs already ordered against the Plaintiff must be paid before any further consideration of the stay takes place. The Defendants have been brought to court on repeated occasions, and the Plaintiff appears to be oblivious to the cost burden that he is imposing on them. His approach of bringing the same motion multiple times is one that all courts discourage. The most immediate sanction that the courts have at their disposal to discourage such conduct is to impose costs.

13 The Plaintiff also submits that he deserves costs of his attendance at a motion that did not proceed back on May 30, 2014. The costs of that motion were not included in the Plaintiff's Notice of Motion and are not before me; in any case, counsel for Better Living Homes, Inc. explains that the reason that motion did not go forward on its scheduled date is that on May 1, 2014 — i.e. a month before the motion date but after the motion date had already been booked with the court office — Justice Corbett imposed the stay of the entire action.

14 All parties, including the Plaintiff, were aware as of May 1, 2014 that the action, and all of its attendant motions, were stayed. The Plaintiff is therefore not entitled to any costs of his unnecessary May 30, 2014 attendance.

15 Counsel for the Better Living Homes defendants has submitted a Bill of Costs in which he seeks costs in the total amount of \$1,264.02. Included in this is the cost of appearing at a motion on February 3, 2015 that did not proceed. The costs of that appearance are not before me, and I would reduce counsel's request accordingly. I would therefore round these costs down to \$1,000.

16 Counsel for the police Defendants has submitted a Bill of Costs in which he seeks costs in the total amount of \$1,071.01. Counsel was compelled to answer the Plaintiff's motion and to draft materials and appear in court in response. I will exercise my discretion to round this figure down to \$1,000 to match that of Better Living Homes, Inc.

17 Counsel for the Landlord and Tenant Board et al. has requested nominal costs in the amount of \$300. Given that counsel was compelled to appear on behalf of his clients who were served with the Plaintiff's motion, this is a reasonable request.

18 The Plaintiff's motion is dismissed.

19 The Plaintiff shall pay costs in the aggregate amount of \$2,300, inclusive of disbursements and HST, broken down as follows:

\$1,000 to Better Living Homes, Inc., Jeffrey Rana, and Dwayne Whitford

\$1,000 to the Toronto Police Services Board, Det. Debbie Harris, PC Brent Larmour, PC Phillip Romain, PC Christopher Drake, PC Ronald MacKay, PC Daniel Doyle, Det. Alexander Wallace, Det. C. Ricci, Sgt. J. Douglas, Matthew Dodds, PC D. Balachor

\$300 to the Landlord and Tenant Board and Jean-Paul Pilon

20 I interpret the endorsement of Corbett J. as requiring the payment of all outstanding costs as a threshold to lifting the stay of proceedings or seeking any further relief in this action. The Plaintiff shall therefore not bring any further

motion to lift or vary the stay of proceedings issued by Corbett J. on May 1, 2014 without first paying the costs ordered in the small claims action, the costs ordered by Corbett J. on May 1, 2014, the costs ordered by Pollak J. on October 22, 2014, and the costs ordered herein.

*Motion dismissed.*

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