

2013 ONSC 5599
Ontario Superior Court of Justice

Willis v. Veeravagupillai

2013 CarswellOnt 12538, 2013 ONSC 5599, 232 A.C.W.S. (3d) 306

Peta-Gaye Willis, Appellant and Jenani Veeravagupillai, Respondent

Lemon J.

Heard: August 21, 2013

Judgment: September 6, 2013

Docket: DC-12-0081-00

Counsel: Bruce Baron, for Appellant

Douglas Levitt, for Respondent

Subject: Civil Practice and Procedure; Property; Corporate and Commercial

Related Abridgment Classifications

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

Civil practice and procedure

XXIII Practice on appeal

XXIII.12 Staying of proceedings pending appeal

XXIII.12.c Miscellaneous

Real property

V Landlord and tenant

V.20 Residential tenancies

V.20.k Termination of tenancy

V.20.k.vii Practice and procedure

V.20.k.vii.B Appeal or review

Headnote

Civil practice and procedure --- Practice on appeal — Staying of proceedings pending appeal — Miscellaneous

Appellant appealed decision of Landlord and Tenant Board — Appellant brought motion to stay appeal pending completion of related action in Court — Respondent sought order dismissing appeal for delay — Stay of appeal would constitute collateral attack on Landlord and Tenant Board — Action in court could not be used to stay appeal simply because it had related issues — Time to perfect appeal was extended on condition appellant would pay amount of month each month — Payments were to continue pending final adjudication of appeal or further order — There was serious issue to be tried and it was not attempt to delay process in order to remain in premises.

Real property --- Landlord and tenant — Residential tenancies — Termination of tenancy — Practice and procedure — Appeal or review

Appellant appealed decision of Landlord and Tenant Board — Appellant brought motion to stay appeal pending completion of related action in Court — Respondent sought order dismissing appeal for delay — Stay of appeal would constitute collateral attack on Landlord and Tenant Board — Action in court could not be used to stay appeal simply because it had related issues — Time to perfect appeal was extended on condition appellant would

pay amount of month each month — Payments were to continue pending final adjudication of appeal or further order — There was serious issue to be tried and it was not attempt to delay process in order to remain in premises.

Table of Authorities

Cases considered by *Lemon J.*:

Garland v. Consumers' Gas Co. (2004), 2004 CarswellOnt 1558, 2004 CarswellOnt 1559, 2004 SCC 25, 72 O.R. (3d) 80 (note), 237 D.L.R. (4th) 385, 319 N.R. 38, 43 B.L.R. (3d) 163, 9 E.T.R. (3d) 163, 42 Alta. L. Rev. 399, 186 O.A.C. 128, [2004] 1 S.C.R. 629 (S.C.C.) — considered

Rules considered:

Rules of Civil Procedure, R.R.O. 1990, Reg. 194
R. 61.09(4) — considered

MOTION to stay appeal pending completion of related action.

Lemon J.:

The Issue

1 The appellant has appealed a decision of the Landlord and Tenant Board to the Divisional Court. In this motion, she seeks, among other things, an order staying her appeal pending the completion of a related action in the Superior Court of Ontario. In return, the respondent seeks an order dismissing the appeal for delay.

Background

2 In brief, the appellant submits that she is not a tenant, but rather has been defrauded of her home by the respondent and others. She alleges that she and her mother were defrauded of the home in the process of re-mortgaging the property. The mortgage broker was the brother of the respondent's boyfriend. From the materials, it appears that not only is the mortgage broker in difficulties with his licensing agency, but so too is at least one of the lawyers that were involved in the history of this property.

3 The appellant started proceedings before the Landlord and Tenant Board. She was essentially unrepresented. She did not like the result. She appealed, and that appeal is pending. She then obtained counsel who has commenced a Superior Court action to set aside the transactions. There are several defendants. The appellant wishes to complete that action before, if necessary, proceeding with her appeal. While the appeal is outstanding, the respondent's application before the Board to evict the appellant for failure to pay rent is stayed. The appellant has not paid anything to the respondent since July of 2012.

4 The respondent denies the appellant's history. She provides few details of the transfer despite admitting that the mortgage broker was her fiancé's brother. She does outline the process of the appellant attempting to repurchase the property from her. The respondent submits that the allegations are unsubstantiated but does acknowledge that there is a serious issue to be tried. In my view, on the materials filed by the appellant, there is clearly a serious case to be tried. I am not persuaded that this is simply an attempt to delay the process in order to remain in the premises.

Analysis

5 I agree with the respondent that a stay of this appeal would constitute a collateral attack on the Landlord and Tenant Board.

6 In *Garland v. Consumers' Gas Co.*, 2004 SCC 25, [2004] 1 S.C.R. 629 (S.C.C.), Iacobucci, J. said at para 71:

71 The doctrine of collateral attack prevents a party from undermining previous orders issued by a court or administrative tribunal. Generally, it is invoked where the party is attempting to challenge the validity of a binding order in the wrong forum, in the sense that the validity of the order comes into question in separate proceedings when that party has not used the direct attack procedures that were open to it (i.e., appeal or judicial review). In *Wilson v. The Queen*, this Court described the rule against collateral attack as follows:

It has long been a fundamental rule that a court order, made by a court having jurisdiction to make it, stands and is binding and conclusive unless it is set aside on appeal or lawfully quashed. It is also well settled in the authorities that such an order may not be attacked collaterally — and a collateral attack may be described as an attack made in proceedings other than those whose specific object is the reversal, variation, or nullification of the order or judgment.

7 On this basis, the stay cannot be granted. The action in the Superior Court cannot be used to stay the appeal simply because it has related issues.

8 Although leave to extend the time to perfect the appeal was not specifically requested in the appellant's Notice of Motion, I can grant leave to extend time pursuant to Rule 61.09(4) of the *Rules of Civil Procedure*. At the time of her appeal, the appellant was without counsel. She now has extremely competent counsel. I am not persuaded that the appellant will need all that counsel submits will be required to proceed with the appeal. The necessary transcripts can likely deal with many of the grounds of appeal. Hard work and ingenuity can provide the support for the other grounds. The time to perfect the appeal is extended for a period of six months.

9 That extension shall be on condition that the appellant pay the sum of \$1,675 on the 15 day of each month, commencing September 15, 2013. At the hearing of the motion, it was agreed that the appellant had paid that sum into the Landlord and Tenant Board for the month of July pursuant to the Board's order. She also agreed that a further payment would be made before the end of August. I presume that that has been done. If not, the August payment shall be made on or before September 15, 2013. The payments will continue pending final adjudication of the appeal or further order.

10 These monthly payments shall be paid to Horlick Levitt Dilella LLP in trust. The respondent shall use those funds to keep any encumbrances on the property in good standing. If the respondent is unable to do so, she shall advise counsel for the appellant forthwith. The respondent also shall not interfere with the appellant's quiet possession and enjoyment of 3866 Ridgeway Way in Mississauga, Ontario pending the final adjudication of the appeal or further order.

11 It must be remembered that even if the appellant were improperly dispossessed of her property, there were two mortgages on the property at the time that the process started. Those mortgages were discharged in that process. They must have been replaced by another debt. Accordingly, she must still be responsible for those payments. If she cannot afford this order, it would appear that she would not have been able to maintain the home in any event.

12 The materials show that the respondent has a mortgage on the property with a monthly payment of \$875.64. The sum of \$1,675 per month is an ample return on investment. That payment by the appellant shall cover the utilities, and property taxes and the respondent shall maintain and keep the utilities and property taxes in good standing pending final adjudication of the appeal or further order.

13 The appellant admits that she has not made any payments on the house since July of 2012. However, she deposes that, before then, she was required to pay to the respondent's agents, on occasion, increases of up to \$1,900 per month. The respondent appears to deny that. In order to clarify that issue, the respondent shall provide the appellant with an accounting of all monies received from or on account of the appellant to date. That shall be completed within 45 days.

14 I am advised that the Board was served with this motion although they did not appear on the argument. All monies paid into the Landlord and Tenant Board, Central Region, pursuant to action CET-25467-12-IN, CEL-26293-12-IN, or CEL-25866-12-IN shall forthwith be transferred to the respondent.

15 This motion is brought within the appeal proceedings of the Landlord and Tenant Board order. This order therefore is without prejudice to any other order that may be obtained by the appellant in her proceeding in the Superior Court of Ontario.

16 If the parties cannot agree on costs, written submissions may be made to me. If so, the appellant shall provide her submissions within 30 days. The respondent shall provide her submissions within 30 days thereafter. Each submission shall be no more than three pages, not including any offers to settle or bills of costs.

Order accordingly.