

COURT OF APPEAL FOR ONTARIO

CITATION: Friedrich v. Metropolitan Toronto Condominium Corporation No.1018,
2019 ONCA 216
DATE: 20190319
DOCKET: M50068

Lauwers J.A. (Motion Judge)

BETWEEN

Ralph Friedrich

Plaintiff (Moving Party)

and

Metropolitan Toronto Condominium Corporation No. 1018

Defendant (Responding Party)

Ralph Friedrich, in person

Dan Rosenbluth, duty counsel

Natalia Polis, for the responding party

Heard: March 13, 2019

REASONS FOR DECISION

[1] Justice Myers, sitting as a Divisional Court judge, dismissed Mr. Friedrich's appeal of a decision of a deputy judge of the Small Claims Court, which dismissed his action against the responding party. His decision is dated February 19, 2019.

[2] Mr. Friedrich's automobile was vandalized in the condominium's underground garage. He blames the vandalism on a change in the provision of security for the garage. He claimed damages for negligence relating to that change in security. The appeal judge's decision was this:

Under the *Condominium Act, 1998*, the Board's business judgment is entitled to deference. It was open to the Appellant to prove that the Board's decision [to change the security system] was unreasonable by calling expert or security evidence. Instead he just submits that the fact that vandalism occurred establishes the case. He argues that the Defendant treated its security guards as concierges and they did not give [their] full time and attention to the CCTV. But absent some evidence that this was unreasonable, or that it foreseeably caused the plaintiff's loss, the plaintiff has not established a breach of the applicable standard of care. The defendant's evidence, that the judge accepted, was that it was prudent in the circumstances. The judge found that the plaintiff did not meet his burden to prove otherwise. I see no error in principle and no palpable or overriding error in these findings.

[3] Mr. Friedrich was obliged to bring a motion for leave to appeal to this court within 15 days of the appeal decision, according to r. 61.03.1 (3) (a) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. The delay in this case was more than 20 days beyond the applicable appeal period. It appears that neither Mr. Friedrich, nor his previous counsel, nor counsel who swore the jurat in his affidavit, was aware that the appeal period was 15 days.

[4] Since the appeal was late, I am obliged to consider the following factors in exercising discretion to extend the time for filing the notice of appeal: a) whether

the moving party had a *bona fide* intention to appeal before the expiration of the appeal period; b) any explanation for the delay in filing; c) any prejudice to the responding parties caused by the delay; and d) the merits of the proposed appeal. What is unusual about this motion is that the delay relates to a motion for leave to appeal to this court from the Divisional Court. In my view, this must affect my assessment of the merits.

[5] I have little doubt that Mr. Friedrich wanted to appeal the decision right away and thought that he would be in time, but his prior counsel, he says, abandoned him. The explanation for the delay is adequate. There is no prejudice to the responding party. The issue is whether the appeal has merit.

[6] Mr. Friedrich seeks to bring a second appeal to this court, having already had one appeal before the Divisional Court. The standard for leave to appeal to the Court of Appeal from a decision of the Divisional Court is set out in *Re Sault Dock Co. Ltd. and City of Sault Ste. Marie*, [1973] 2 O.R. 479 (C.A.), and cases following it. The focus is the public importance of the issue proposed to be raised in the appeal.

[7] Duty counsel argues that the appeal judge was wrong in law to require Mr. Friedrich to provide expert evidence on the standard of care concerning the security services in order to succeed. This, he asserts, is a matter of public importance because it has a broader reach.

[8] However, in my view, the appeal judge's decision is very specific and has no broader application than the immediate case before him. This is not a case of public importance.

[9] I therefore find Mr. Friedrich has not established that his appeal is meritorious, as he must do to justify an extension of time within which the motion for leave to appeal may be brought where what is sought is a second appeal. The motion is dismissed with costs payable by Mr. Friedrich to the responding party in the amount of \$1,000 all-inclusive.

“P. Lauwers J.A.”