Citation: Kinnarath v People's Party of Canada, 2024 MBCA 2
Date: 20240108
Docket: AI23-30-09933

IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Holly C. Beard
Mr. Justice Christopher J. Mainella
Madam Justice Anne M. E. Turner

B E T W E E N:

OUMER KINNARATH	)	
	)	***R. L. Tapper, K. C.***
(Plaintiff) Respondent	)	*for the Appellant*
	)	
- and -	)	***I. Qureshi*** *and*
	)	***M. MacLeod***
PEOPLE'S PARTY OF CANADA	)	*for the Respondent*
	)	
(Defendant) Appellant	)	***No appearance***
	)	*for M. Choiselat,*
- and -	)	*Y. Henderson, S. Fletcher,*
	)	*T. McDougall, D. Storie,*
MONIQUE CHOISELAT, YOGI HENDERSON,	)	*J. Doe, J. Doe and*
STEVEN FLETCHER, TODD MCDOUGALL,	)	*ABC Inc.*
DEREK STORIE, JOHN DOE, JANE DOE and	)	
ABC INC.	)	*Appeal heard and*
	)	*Decision pronounced:*
(Defendants)	)	***January 8, 2024***

MAINELLA JA (for the Court):

Introduction

[1] This case illustrates how a right of appeal may be qualified by the requirement to first obtain leave to appeal, and the potential pitfall of not doing so when it is required.

[2] The defendant, People's Party of Canada (PPC), a federally registered political party and federal not-for-profit corporation, filed an appeal of the order dismissing its motion for summary judgment dismissing the plaintiff's claim against it (see MB, *Court of King's Bench Rules*, Man Reg 553/88 at r 20 [the *KB Rules*]). The PPC did not seek leave to appeal by way of a motion before a chambers judge of this Court. After hearing the submissions of counsel, we decided that leave to appeal was required in the circumstances and that leave should be denied. We ordered that the appeal be quashed with reasons to follow. These are those reasons.

Background

[3] The PPC describes itself as a populist, right-wing political party. At the material time, the defendant, Monique Choiselat (Choiselat), was a member of the PPC and the chief executive officer (the CEO) of the PPC's Winnipeg Centre electoral district association (the EDA).

[4] The action giving rise to the appeal relates to a controversy surrounding a PPC political rally in 2019 in the federal electoral district of Winnipeg Centre (the political rally). The plaintiff, who describes himself as a "Social Justice Advocate", is a critic of the PPC, particularly its immigration policy. He openly calls the PPC a political party that provides a harbour to, and platform for, racists and bigots. He organized opposition to the PPC political rally. As a result, the plaintiff was allegedly the subject of negative social media statements: defamatory comments, including branding him a "terrorist", disinformation and intimidation orchestrated by Choiselat.

[5] The defamatory comments were posted on the internet via the personal social media account of Choiselat and later reposted to the social media account of the EDA, which bears the party logo of the PPC.

[6] Once the headquarters of the PPC was advised of what had occurred, it conducted an investigation and then severed its relationship with Choiselat.

[7] The PPC disavows any legal responsibility. It moved for summary judgment dismissing the plaintiff's claim arguing that, even if the allegations and damages are proven, it cannot be held vicariously liable for, what it submitted was, an errant member who said things that ought not to be said.

[8] The motion judge was not persuaded that the PPC had demonstrated that there was no genuine issue requiring a trial as to its vicarious liability because there was evidence that it exercised control over the actions of the CEO of the EDA; it provided its EDAs with direction about using social media as well as provided a platform for social media strategy; and, finally, in the motion judge's opinion, the nature of the record was inadequate for him to determine with confidence that this was, as the PPC claimed, nothing more than the misguided and unsanctioned actions of a voluntary member of a political party.

[9] An important point of appellate practice overshadows the decision of the motion judge and the merits of the PPC's appeal of the order he made.

[10] Normally, the expeditious and orderly resolution of a dispute according to law entails that rights of appeal are reserved until a final decision on a dispute has been made, as opposed to permitting appeals "midstream" in

the litigation (*H (LT) v Children's Aid Society of Halifax*, 1989 CanLII 8895 at 181 (NSSC)).

[11] After the PPC's filing of its notice of appeal, the registrar of this Court invited the parties to address in their submissions the preliminary jurisdictional issue of the effect of section 25.2(1) of *The Court of Appeal Act*, CCSM c C240 [the *CA Act*] on the PPC's appeal, as leave to appeal had not been sought. That section provides:

> **Leave required for interlocutory appeals**
> **25.2(1)** Subject to subsection (2), an appeal must not be made to the court with respect to an interlocutory order of a judge of the Court of King's Bench unless leave to appeal is granted by a judge or the court.

Discussion

[12] The purpose of provisions such as section 25.2(1) of the *CA Act* is to cull certain types of appeals to avoid "needless expense and delay" (*Grant v Saskatchewan Government Insurance*, 2003 SKCA 17 at para 5). The provision gives legislative force to the general common law rule against hearing appeals of an interlocutory matter, absent a plain case of error (see *Mardynalka v Kurian Const Ltd*, 1986 CanLII 4787 at 510 (MBCA)).

[13] Section 25.2(1) of the *CA Act* focuses attention on whether the order appealed from finally determines substantive rights in dispute in the claim that is the subject of the litigation, as opposed to resolving a collateral matter to the merits of the dispute (see *College of Registered Nurses of Manitoba v Hancock*, 2023 MBCA 70 at para 75). The latter scenario falls within that legislative provision, while the former situation falls outside the confines of

section 25.2(1). As Feldman JA explained in *1476335 Ontario Inc v Frezza*, 2021 ONCA 822: "A final order disposes of the litigation, or finally disposes of part of the litigation [citation omitted]. An interlocutory order disposes of the issue raised, most often a procedural issue, but the litigation proceeds" (at para 7).

[14] We disagree with the PPC's submission that section 25.2(1) of the *CA Act* does not apply to its appeal and it has an unqualified appeal as of right. The wording of section 89 of *The Court of King's Bench Act*, CCSM c C280 [the *KB Act*], which the PPC relies on for its right of appeal in this matter, makes clear that its right of appeal is qualified by section 25.2 of the *CA Act*. Section 89 of the *KB Act* provides:

> **Appeals to Court of Appeal**
> **89** Unless an Act provides otherwise, an order made by the court and the verdict of a jury may be appealed, in whole or in part, if permitted under sections 25.1 and 25.2 of *The Court of Appeal Act*.

[15] It is trite that, unlike the granting of summary judgment, in whole or in part, a dismissal of a motion for summary judgment is normally an interlocutory order, requiring leave to appeal (see *Nguyen v Winnipeg (City of)*, 2022 MBCA 33 at paras 21-23 [*Nguyen*]; and *Skunk v Ketash*, 2016 ONCA 841 at para 58).

[16] Unlike was the situation in *Nguyen* (where the order appealed from was more than a bare dismissal of a motion for summary judgment; it resolved some of the substantive rights of the parties as framed by the action), here, the motion judge's order has no final qualities. The motion judge simply dismissed the PPC's summary judgment motion, nothing more.

[17] The relevant clues as to whether an order appealed from is final or interlocutory are to be found in the wording of the order and the reasons for decision. Here, the motion judge made no evidentiary findings that would be binding at trial. He also did not decide any of the substantive rights of the parties or the issues in dispute, as framed by the action, which was open to him under the *KB Rules* and the modern approach discussed in *Hryniak v Mauldin*, 2014 SCC 7, if appropriate. Rather, the determination he made under r 20 was only that a genuine issue requiring a trial exists. In our view, such an order is interlocutory, not final; leave to appeal under section 25.2(1) of the *CA Act* is therefore required (absent one of the exceptions in section 25.2(2) arising).

[18] Both parties proposed that if this Court was of the view that the order appealed from is interlocutory, as opposed to final, we should nevertheless decide the question of leave to appeal without a perfected notice of motion for leave as is normally required (see MB, *Court of Appeal Rules (Civil)*, Man Reg 555/88R at rr 3.1(1), 43.1(1) [the *CA Rules*]).

[19] While this Court has jurisdiction to provide the relief that the justice of the case demands, even at this late hour, the path proposed by the parties is exceptional and is a departure from the normal appellate procedure that is established to ensure the orderly conduct of an appeal (see *Jhanji v The Law Society of Manitoba*, 2022 MBCA 78 at para 13).

[20] Save in an exceptional case, the requirement of leave to appeal should be decided early in the appellate process by a chambers judge based on a motion filed and perfected in accordance with the *CA Rules*, as opposed to being determined by a panel of this Court at the date originally set for the

hearing of the appeal on its merits. The circumstances of this case highlight the problems that can arise when parties deviate from the expected practice.

[21] The summary judgment motion was decided by the motion judge on April 17, 2023. Trial dates for the action were then set for April 29-May 10, 2024 in the Court of King's Bench. The PPC filed its notice of appeal on May 8, 2023. On June 30, 2023, submissions on the question of leave to appeal were requested by the registry. The parties provided those on July 4, 2023 and September 27, 2023. The dispute was left to this Court to resolve at the scheduled hearing of the appeal.

[22] Proceeding with a motion for leave to appeal now risks postponing the upcoming trial dates set for this matter, which is neither proportionate nor cost effective. For example, had this Court decided to hear the appeal on its merits and reserved its decision, the parties and the Court of King's Bench would be left in the dark as to whether or not the trial would proceed as scheduled.

[23] Leaving aside the PPC's adamant view that section 25.2(1) of the *CA Act* does not apply, with which we do not agree, we see no reason to grant it leave to appeal under that provision (see *Knight v Daraden Investments Ltd et al*, 2022 MBCA 69 at paras 14-26).

[24] Nothing need be said about the merits of the PPC's appeal because the question of leave can be determined on the insufficient importance of the appeal.

[25] The PPC concedes in its factum that its grounds of appeal are ones of mixed fact and law and that the standard of review is therefore highly deferential.

[26] In our view, this is the type of situation where a motion judge is entitled to significant "elbow room" by an appellate court. We see no reason to entertain a premature debate in this Court about vicarious liability arising from a complex set of interwoven facts on an imperfect record, without any broader precedential importance to the grounds of appeal. Entertaining such an appeal runs contrary to the long-established practices of not lightly interfering with discretionary decisions before litigation is concluded and discouraging a piecemeal approach to litigation. In summary, we are not persuaded that there is sufficient importance to the PPC's appeal to warrant leave to appeal being granted.

[27] Finally, looking at the record as a whole, we are not persuaded that there is some overarching concern for the interests of justice to warrant us exercising our residual discretion to grant leave to appeal.

Disposition

[28] In the result, the appeal was quashed with costs.

Mainella JA

Beard JA

Turner JA