Citation: Wolfe et al v Taylor et al, 2022 MBCA 48
Date: 20220511
Docket: AI21-30-09618

IN THE COURT OF APPEAL OF MANITOBA

Coram: Mr. Justice William J. Burnett
Madam Justice Janice L. leMaistre
Madam Justice Lori T. Spivak

B E T W E E N :

	)	***F. J. Trippier*** *and*
	)	***I. Vakurova***
	)	*for the Appellants*
LINCOLN WOLFE and 5606269 MANITOBA LTD.	)	
	)	***R. A. McFadyen***
	)	*for the Respondents*
(Applicants) Respondents	)	
	)	***J. M. Lee, Q.C.*** *and*
- and -	)	***J. J. B. Burnell***
	)	*for Deloitte Restructuring*
DUANNE TAYLOR and 5608067 MANITOBA LTD.	)	*Inc., the Court-Appointed*
	)	*Liquidator for Taylor Bros.*
	)	*Farm Ltd. and Edwin*
(Respondents) Appellants	)	*Potato Growers Ltd.*
	)	
- and -	)	***C. E. Howden***
	)	*for Pitblado LLP,*
TAYLOR BROS. FARM LTD. and EDWIN POTATO GROWERS LTD.	)	*a judgment creditor of*
	)	*Taylor Bros. Farm Ltd. and*
	)	*Edwin Potato Growers Ltd.*
(Respondents)	)	
	)	*Appeal heard and*
	)	*Decision pronounced:*
	)	***May 11, 2022***

LEMAISTRE JA (for the Court):

[1] Duanne Taylor and 5608067 Manitoba Ltd. (the respondents) appeal the dismissal of their motion for leave to commence a claim in negligence and breach of fiduciary duty against Deloitte Restructuring Inc., the court-appointed liquidator (the liquidator).

[2] The history of the parties and the background to the liquidation proceedings are set out in 2020 MBCA 44 (*Wolfe*), and need not be repeated for the purposes of this appeal.

[3] Where the activities of a court-appointed receiver have been approved by the Court, the applicant must establish a strong prima facie case before leave to commence proceedings against the receiver will be granted (see *Bank of America Canada v Willann Investments Ltd*, 1993 CarswellOnt 249 at paras 7-9 (Ct J (Gen Div)) (*Willann*); and *Royal Bank of Canada v 6382330 Manitoba Ltd et al*, 2021 MBQB 72 at paras 6-9).

[4] In our view, the motion judge was correct when he concluded that this was the appropriate test on the leave motion. The record in this case supports his conclusion that he had "approved each step being impugned" in the proposed claim. Specifically, the motion judge found that he had previously addressed the respondents' assertions that the liquidator acted improperly by rejecting their offer to purchase as a result of their failure to meet the deposit requirement and by refusing their request for disclosure of confidential sales information. He also found that he had previously dealt with the respondents' allegation that the sales agreements entered into by the liquidator were improvident. We see no error in the motion judge's conclusions.

[5] The respondents have not established that they would have raised additional issues on the motion to approve the sales agreements if they had received the confidential sales information they requested prior to the motion. They have not identified any arguments that were not previously raised and we are not persuaded that, without the confidential sales information, they were unable to respond meaningfully to the issues.

[6] Moreover, the respondents have provided no basis to support a claim of wilful misconduct or gross negligence, as required by the terms of the liquidation order in order to commence a claim against the liquidator. We agree with the motion judge that the claim, as framed, would amount to a collateral attack on his prior orders and is barred by the doctrine of issue estoppel.

[7] Granting leave to the respondents to commence a claim against the liquidator that is grounded in actions approved by the Court would render the previous orders of the Court approving those actions meaningless (see *Willann* at para 10).

[8] The motion judge's decision is discretionary and entitled to significant deference. We are not convinced that he misdirected himself or the order is so clearly wrong as to amount to an injustice (see *Perth Services Ltd v Quinton et al*, 2009 MBCA 81 at paras 24-28; and *Wolfe* at para 30).

[9] Nor are we persuaded that this is one of those rare cases in which an appellate court ought to intervene in the award for solicitor and client costs (see *Nash v Nash*, 2019 MBCA 31 at para 42).

[10] In the result, the appeal is dismissed with one set of costs to the estate.

leMaistre JA

Burnett JA

Spivak JA