NOVA SCOTIA COURT OF APPEAL
Citation: *Tobin v. Beck*, 2017 NSCA 42

Date: 20170518
Docket: CA 461026
Registry: Halifax

Between:

Kenneth (A.K.A. Keith) Brian Tobin

Appellant

v.

Durrell Beck, and the International Brotherhood of Electrical Workers – (IBEW) – Local 1852, and the International Brotherhood of Electrical Workers – (IBEW) – First District (Canada)

Respondents

Judges:	Beveridge, Farrar, and Bryson, JJ.A.
Appeal Heard:	May 17, 2017, in Halifax, Nova Scotia
Held:	Leave granted and appeal allowed per reasons by the Court
Counsel:	Liam Gillis, for the appellant Duncan MacEachern for the respondent Durrell Beck Guy LaFosse, Q.C. for International Brotherhood of Electrical Workers Local 1852 (not participating) Philip Chapman for International Brotherhood of Electrical Workers First District (not participating)

By the Court (Orally):

[1] We are unanimously of the view that leave should be granted and the appeal allowed.

[2] Mr. Beck claims that he was seriously injured by Mr. Tobin who was driving a vehicle owned by IBEW Local 1852. He further claims that Mr. Tobin was an employee and agent for the Local at the time. Mr. Tobin and the Local admit ownership of the vehicle and agency. Mr. Beck applied for the highly exceptional relief of a *Mareva* injunction, to restrain Mr. Tobin from disposing of assets pending trial. The relief was granted. In granting a *Mareva* injunction, the application judge erred in the following respects.

[3] First, he erred in law by using the "serious question to be tried" threshold test in *R.J.R - MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, rather than the more onerous tests referred to in *Aetna Financial Services v. Feigelman*, [1985] 1 S.C.R. 2, requiring either "a strong *prima facie*" case or a "good arguable case".

[4] Second, the judge made a palpable and overriding error in finding that the owner of the motor vehicle had denied vicarious liability for the motor vehicle accident involving its employee, Mr. Tobin. It appears that the judge confused I.B.E.W. First District (Canada) with I.B.E.W. Local 1852 which owned the motor vehicle and employed Mr. Tobin, both of which Local 1852 admitted.

[5] Third, Mr. Beck, did not give evidence. There was not a proper factual foundation either addressing the merits or the extent of damage and injury, relevant to irreparable harm and balance of convenience.

[6] Fourth, there was no evidence that Mr. Tobin was attempting to flout the process of the Court by concealing assets, acting fraudulently, or inequitably towards Mr. Beck, all of which are usual requirements of *Mareva* relief, (see for example *Scotia Wholesale Ltd. and Flynn v. Magliaro* (1987), 81 N.S.R. (2d) 201 (C.A.) and *Aetna*, at ¶ 42 and 43).

[7] In a proper case, *Mareva* relief may be appropriate. But in general, pre-judgment orders of this type are not granted by our courts, and ordinarily it would be wrong to interfere prior to trial with the freedom of a defendant to deal with his

assets, in the absence of a strong case for the plaintiff and the risk of serious consequences to him, should interim relief not be ordered.

[8] We add that *Rule* 42.11(2) does not alter the common law test for an interlocutory injunction, but merely refers to the common law "requirements" for obtaining injunctive relief.

[9] The interlocutory injunction granted by the application judge and his costs award of $1,500 is set aside. The appellant shall have $1,500 costs for the application in the court below and $1,000 costs, inclusive of disbursements on this appeal.

Beveridge, J.A.

Farrar, J.A.

Bryson, J.A.