

COURT OF APPEAL FOR ONTARIO

BETWEEN:

THE CATALYST CAPITAL GROUP INC.

**Plaintiff
(Appellant/Responding Party)**

and

BRANDON MOYSE and WEST FACE CAPITAL INC.

**Defendants
(Respondents/Moving Parties)**

**BOOK OF AUTHORITIES OF THE
RESPONDENT/MOVING PARTY, BRANDON MOYSE
(Motion to Quash Appeal)**

September 9, 2015

Paliare Roland Rosenberg Rothstein LLP
155 Wellington Street West
35th Floor
Toronto ON M5V 3H1
Tel: 416.646.4300
Fax: 416.646.4301

Robert A. Centa (LSUC# 44298M)
Tel: 416.646.4314
robert.centa@paliareroland.com
Kristian Borg-Olivier (LSUC# 53041R)
Tel: 416.646.7490
kris.borg-olivier@paliareroland.com
Denise Cooney (LSUC# 64358R)
Tel: 416.646.74908
denise.cooney@paliareroland.com

**Lawyers for the Defendant
(Respondent/Moving Party),
Brandon Moyse**

TO: **Lax O'Sullivan Scott Lisus LLP**
Barristers and Solicitors
145 King Street West
Suite 1920
Toronto, ON M5H 1J8
Tel: 416.598.1744
Fax: 416.598.3730

Rocco Di Pucchio
Tel: 416.598.2268

Andrew Winton
Tel: 416.644.5342

Lawyers for the Plaintiff
(Appellant/Responding Party)

AND TO: **Davies Ward Phillips & Vineberg LLP**
Barristers and Solicitors
155 Wellington Street West
40th Floor
Toronto, ON M5V 3J7
Tel: 416.863.0900
Fax: 416.863.0871

Matthew Milne-Smith
Tel: 416.863.5595

Andrew Carlson
Tel: 416.367.7437

Lawyers for the Defendant
(Respondent/Moving Party),
West Face Capital Inc.

INDEX

INDEX

1. *Simmonds v. Simmonds*, 2013 ONCA 479
2. *Pimiskern v. Brophey*, 2013 ONSC 572

TAB 1

2013 ONCA 479
Ontario Court of Appeal

Simmonds v. Simmonds

2013 CarswellOnt 10221, 2013 ONCA 479, 117 O.R. (3d) 479, 231 A.C.W.S. (3d) 31

**Garfield Simmonds, Applicant (Appellant) and Michelle
Simmonds, Respondent (Respondent in Appeal)**

Alexandra Hoy A.C.J.O., K. Feldman J.A., Janet Simmons J.A.

Heard: July 05, 2013
Judgment: July 5, 2013
Docket: CA C56555

Counsel: Peter M. Callahan, for Appellant
Orlando da Silva Santos, for Respondent

Subject: Civil Practice and Procedure; Public; Torts

Table of Authorities

Cases considered:

Pimiskern v. Brophay (2013), 2013 ONSC 572, 2013 CarswellOnt 1161 (Ont. S.C.J.)
— considered

APPEAL by plaintiff from judgment dismissing plaintiff's motion for order for contempt.

Per curiam:

- 1 The appellant appeals the January 22, 2013 order of the motion judge dismissing his motion for a finding that the respondent was in contempt of court because she had failed to comply with the August 3, 2012 order of Mossip J. requiring her to provide specified disclosure in respect of her income loss claim arising from the motor vehicle accident that occurred in 2004.
- 2 The motion judge reviewed the materials that had been provided and found that the respondent had complied with the order of Mossip J. and provided all relevant disclosure.

TAB 2

CITATION: Pimiskern v. Brophey, 2013 ONSC 572
COURT FILE NO.: DC-12-45ML
DATE: 20130124

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Silke Christina Pimiskern

Applicant

– and –

James Christopher Brophey

Respondent

Dean H. Clark, for the Applicant

Deborah L. Rollier, for the Respondent

HEARD: January 21, 2013

DECISION ON MOTION FOR LEAVE

THOMAS J.:

- [1] The applicant, Silke Christina Pimiskern (“Pimiskern”), applies for leave to appeal pursuant to s. 19(1)(b) of the *Courts of Justice Act*, R.S.O. 1990 c. C.43 and Rule 62.01 and 62.02 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 94 from the order of Bondy J. dated September 14, 2002.

Background

- [2] Pimiskern and the respondent, James Christopher Brophey (“Brophey”), resided in a common law relationship. They have one child, Nicholas Brophey, born April 18, 2008.
- [3] The couple separated in September 2008 and the issues of custody, access and child support were resolved by minutes of settlement and then the final order of Campbell J. dated December 18, 2009.

- (a) A declaration that the Order is in full force;
- (b) Directing the Family Responsibility Office to enforce paragraph 4(a) of the Order.

[10] The contempt motion came before Bondy J. in a regular motions court. He endorsed the following:

The motion is dismissed for lack of jurisdiction (see FLR 31(1), *Forrest* and *Lacroix*) (2000) O.J. No. 1990 and *Murano v Murano* (2002) O.J. No. 3632) and because service of a contempt motion while mediation was in the process of being scheduled only served to inflame matters. Mr. Clark did not give [the] other side a letter or courtesy call to seek resolution but rather brought this contempt motion.

Costs of \$2,500.00 payable within 30 days by this Respondent to the Applicant. These costs are on a substantial indemnity basis.

- [11] In dismissing the motion it is clear from the endorsement that Bondy J. felt the contempt motion sought a finding related only to the non-payment of money and therefore he was without jurisdiction. He was further concerned about the timing of this step taken by Mr. Clark.
- [12] The applicant seeks to appeal this dismissal and the related costs order. She alleges good reason to doubt the correctness of the decision and suggests it is a matter of importance. (Rule 62.02(4)(b))

Analysis

- [13] The parties have provided materials which speak to a series of issues including the power of the motions judge in contempt proceedings. I believe, however, that this matter can be simply determined based on the nature of the order itself.

- [19] Having found the order of Bondy J. to be final, I dismiss this application for leave.
- [20] I must deal with costs. I am aware that part of the concern raised by Mr. Clark in his materials and argument was what he felt was the punitive nature of the costs award in the order appealed from. He argues it was unreasonable taking into account the means and expectations of his client. I have no jurisdiction regarding those costs and this is not to be interpreted as an indication that I would reduce the costs if I could.
- [21] This motion for leave to appeal was ill-advised. In fact, it seems that this is the second set of motion materials seeking the same result. The respondent was served with two motion records and forced to respond to both, only to find that only the second motion was ever filed.
- [22] The issue of my jurisdiction was clearly raised in the respondent's material. I have taken into account the factors to be considered in my discretion on costs as they are set out in Rule 57.01 and the relevant cases. Particularly, I have considered the themes of indemnification and reasonableness. It might be viewed that this leave application amounts to a step captured by rule 57.01(f).
- [23] Costs here must follow the success of the respondent and must enforce responsibility in litigation. The respondent has provided a bill of costs on a substantial indemnity basis in the total amount of \$6,965.72 which takes into account their need to respond to both leave applications served by the applicant.
- [24] I choose to exercise my discretion to reduce costs awarded to \$3,500 inclusive of disbursements and HST. It is my belief this properly represents partial indemnity costs and should fall within the reasonable expectations of the losing applicant. I am further concerned that the cumulative nature of the costs awards may leave the applicant unable to continue to litigate the substantive issues. As those issues include child support and access they have importance to the court beyond the adversarial positions of the parties taken here.

CITATION: Pimiskern v. Brophey, 2013 ONSC 572

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Silke Christina Pimiskern

Applicant

– and –

James Christopher Brophey

Respondent

DECISION ON MOTION FOR LEAVE

Thomas J.

Released: January 24, 2013

THE CATALYST CAPITAL GROUP INC.
Plaintiff
(Appellant/Responding Party)

-and- BRANDON MOYSE et al.
Defendants
(Respondents/Moving Parties)

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT
TORONTO

**BOOK OF AUTHORITIES OF THE
RESPONDENT/MOVING PARTY, BRANDON MOYSE
(Motion to Quash Appeal)**

Paliare Roland Rosenberg Rothstein LLP
155 Wellington Street West
35th Floor
Toronto ON M5V 3H1
Tel: 416.646.4300
Fax: 416.646.4301

Robert A. Centa (LSUC# 44298M)

Tel: 416.646.4314
robert.centa@paliareroland.com

Kristian Borg-Olivier (LSUC# 53041R)

Tel: 416.646.7490
kris.borg-olivier@paliareroland.com

Denise Cooney (LSUC# 64358R)

Tel: 416.646.74908
denise.cooney@paliareroland.com

Lawyers for the Defendant (Respondent/Moving Party),
Brandon Moyse