

COURT OF APPEAL FOR ONTARIO

BEFORE: SOSSIN J.A.

DATE: FRIDAY, DECEMBER 24, 2021

DISPOSITION OF COURT HEARING:



COURT FILE NO.: M53047 (C70114)

TITLE OF PROCEEDING:
ONTARIO SECURITIES COMMISSION
V. GO-TO DEVELOPMENTS HOLDINGS

The moving party, Go-To Development Holdings (“GTDH”), brings this motion for an Order staying the Order of Patillo J. issued on December 10, 2021, which, *inter alia*, appointed KSV Restructuring Inc. (“KSV”) as receiver and manager of the moving party and other entities as well as their properties and assets (the “Receivership Order”). The Receivership Order was granted on an application by the Ontario Securities Commission (the “OSC”) after its investigation led to allegations of fraud and giving false evidence against GTDH’s directing mind, Oscar Furtado.

The test for a stay is not in dispute, and is adapted from the test for an interlocutory injunction set out by the Supreme Court in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, at p. 334. The factors to be considered are whether: (a) there is a serious issue to be adjudicated; (b) there will be irreparable harm if the stay is refused; and (c) the balance of convenience favours granting or refusing the stay.

The threshold for establishing a serious issue to be adjudicated is low. Among other grounds, GTDH argues that Patillo J. erred by hearing the application on short notice and justifying this decision by the fact that the OSC could have brought an *ex parte* motion. In my view, GTDH meets the first threshold of a serious issue to be adjudicated.

With respect to irreparable harm, GTDH alleges that it will suffer significant reputational damage due to the Receivership Order, which will impact its investors, refinancing and certain business transactions. According to GTDH, the Receivership Order “will effectively end Go-To Developments as an ongoing enterprise.” GTDH’s arguments are speculative. There is no evidence in the record that the Receivership Order will give rise to this impact.

With respect to the balance of convenience, this court has accepted that the balance of convenience favours a public entity carrying out a public interest mandate; see, for example, *Reynolds v. Alcohol and Gaming (Registrar)* 2019 ONCA 788, 60 C.P.C. (8th) 43, at paras. 15-16, 18. Other affected parties whose interests the OSC seeks to protect, such as the GTDH investors, may also be considered in the balance of convenience analysis. The balance of convenience in this case favours the OSC, as it brought its application for a Receivership Order in order to protect investors and as part of its public interest mandate.

The three factors in a motion for a stay are not to be considered in isolation. In this case, while GTDH is seeking to adjudicate a serious issue on appeal, the OSC has the stronger

position with respect to irreparable harm and balance of convenience. Considering these factors as a whole, the interests of justice do not favour a stay. The motion is dismissed. Any costs consequences arising from this motion will be determined by the panel hearing the appeal.

L. SOSSIN J.A.