

ANTHONY ZANARDO IN HIS CAPACITY v. DI BATTISTA GAMBIN
AS THE ESTATE TRUSTEE FOR THE DEVELOPMENTS LIMITED et al.

ESTATE OF LUIGI GAMBIN
Applicant (Respondent in Appeal)

Respondents (Appellants)

Aug 24/18

J. OPOLSKY & SILVER FOR APP.
V. BARRÉ FOR RESP.

APP SEEKS A STAY PENDING APPEAL. IN

LIGHT OF THE FINDINGS OF DUMPHY J. THE APP.

ALLEGES THE APPROPRIATENESS OF ORDERS

PROTECTING THE BUSINESS AND THE RESPONDENTS'

INTEREST BY MECHANISMS TO ENSURE TRANSPARENCY

AND ACCOUNTABILITY THROUGH INDEPENDENT OVERSIGHT.

COUNSEL ARE WORKING ON TERMS. UNTIL AN ORDER

IS ISSUED UPON AND SIGNED, THE APPELLANTS

ARE ENSURED FROM SPENDING MORE THAN

\$10,000 AND ENTERING INTO CONTRACTS OR CLOSING

ANY TRANSACTIONS ~~BEYOND~~ ^{BEYOND} OR TRIVIAL MATTERS

LIKE PERRY CASH AND OFFICE SUPPLIES.

THE APP SEEKS TO STAY THE ELECTION

PROCESS PROVIDED BY DUMPHY J. THAT EXPIRES

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ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

Proceeding commenced at TORONTO

APPELLANTS' MOTION RECORD
(Appellants' motion for stay pending appeal,
returnable August 24, 2018)

Torjys LLP
79 Wellington St. W., 30th Floor
Box 270, TD South Tower
Toronto, ON M5K 1N2
Fax: 416.865.7380

Patricia D. S. Jackson (LSO #: 18466S)
E-mail: tjackson@torjys.com
Tel: 416.865.7323

Jeremy Opolsky (LSO #: 60813N)
E-mail: joplosky@torjys.com
Tel: 416.865.8117

Jonathan Silver (LSO #: 70137Q)
E-mail: jsilver@torjys.com
Tel: 416.865.8198

Lawyers for the Respondents (Appellants)

NEXT WEEK. THE APP SAYS THAT ABSENT VALUATION, THEY WILL NOT BUY. THAT MEANS THAT UNLESS THE APPEAL SUCCEEDS, THERE WILL BE A LIQUIDATION. THE APP SAYS THIS PREJUDICES HIS ABILITY TO KEEP THE COMPANY THAT DUNPHY J. OFFERED.
 I DISAGREE.

DUNPHY J. ORDERED A LIQUIDATION FOR OBVIOUS REASONS IF HIS FINDINGS OF FACT STAND. HE ~~OR~~ DEEMED IT DESIRABLE TO GIVE MR. DiBATTISTA A TWO WEEK WINDOW TO ELECT TO BUY THE COMPANY FOR 50% OF A SUBSEQUENTLY DETERMINED FAIR VALUE. THE APP SAYS IT IS UNFAIR TO BE FORCED TO ELECT WITHOUT KNOWING THE PRICE. HE SAYS HE CANNOT ASSESS HIS ABILITY TO PURCHASE OR TO FINANCE A PURCHASE. THERE ARE TWO ANSWERS TO THIS. FIRST, DUNPHY J. DID NOT ORDER OR FIND IT JUST AND CONVENIENT TO ORDER A BUYOUT AT FMV ONLY KNOWN. HE DID NOT ORDER AN AUCTION. HE ORDERED A LIQUIDATION. HE GAVE MR. DiBATTISTA A QUICK OPPORTUNITY TO BUY. ~~BASED~~ ON THE FACTS, MR. DiBATTISTA RUNS THE

COMPANY. HE KNOWS THE ASSETS. FURTHER, THE ASSETS ARE A SMALL NUMBER OF REAL ESTATE HOLDINGS. THERE IS NO DEBT, THERE IS SUBSTANTIAL CASH IN THE BANK. MR. DiBATTISTA KNOWS THE INCOME THROWN OFF BY EACH PROPERTY, AS DUNNAY J. FOUND AT PARA. (120) THE ASSETS ARE NOT HARD TO ~~SEE~~ VALUE, IF MR. DiBATTISTA IS NOT COMFORTABLE ELECTING TO BUY KNOWING THAT EVEN IF HE FINANCES, HE HAS CASH AND NEEDS NO MORE THAN 50% OF THE EQUITY OF THE PROPERTIES TO DO SO, ~~IF HE DOES NOT~~ ~~CONTACT THEM TO BUY~~, THEN DUNNAY J. EXPECTED THE LIQUIDATION TO PROCEED, THE QUOTE ASPECT OF THE ELECTION IS BY DESIGN, IT IS NOT CAUSED BY THE APPEAL.

ON THE OTHER HAND, TO STAY THE ELECTION CHANGES ITS ENTIRE UNDERPINNING. IF MR. DiBATTISTA GETS TO ELECT IN 6 MONTHS OR A YEAR, HE CAN AFFECT THE BUSINESS BETWEEN NOW AND THEN AND HE WILL THEN BE APPROPRIATELY VALUATION AND ANY OTHER MARKET INFORMATION THAT HE MAY SEEK. THAT MOVES THE TARGET / 4

OF THE RELIEF FROM A LIQUIDATION (UNLESS MR
DIBATTISTA KNOWS RIGHT NOW THAT HE WANTS TO BUY
AND "PUTS HIS OYONBY WHERE HIS MOUTH IS") TO BEING
A LONGTAN OPTION WITH MR BATTISTA HOLDING
ALL THE CARDS.

IF THE APPEAL IS DISMISSED, MR DIBATTISTA
IS NOT PRESUDICED BY ELECTING NOW. EVERYTHING
WILL BE READY TO GO FOR A QUICK CLOSING.
IF THE APPEAL IS ALLOWED, THE ELECTION WILL
BE QUASHED WITH THE ORDER BELOW.

I DO NOT VIEW EITHER THE LIQUIDATION OR
THE ELECTION AS TIED TO AN ORDER FOR THE
PAYMENT OF MONEY. IN ORDERING A WIND-UP THE
COURT PUTS IN PLACE AN ENTIRE STATUTORY
MECHANISM. ^{ASSETS WILL BE CALLED-IN AND SOLD.} PAYMENTS WILL BE MADE TO CREDITORS,
EMPLOYEES, THE LIQUIDATOR, AND ULTIMATELY IF THERE
IS EQUITY, TO SHAREHOLDERS. THAT IS A FUNCTION
OF THE STATUTORY SCHEME, NOT THE ORDER OF
A ~~WINDING-UP~~ WINDING-UP. IT IS NOT THE SAME AS
SELLING A HOUSE TO FUND MATRIMONIAL LIABILITIES.
A WINDING-UP PROCESS IS A FAR MORE NEARLY
ENGAGEMENT INVOLVING EQUITABLE NOTIONS

OF WHAT IS FAIR AND REASONABLE TO GUIDE
 A ^{COMPLETE} REAL TIME PROCESS, THE STAY SHOULD BE
 SUBJECT TO DISCRETION AS A RESULT TO REFLECT
 THE EQUITABLE NATURE OF THE REMEDY, IT IS NOT
 A PAYMENT OF MONEY OR SO BOUND UP IN AN ORDER
 FOR THE PAYMENT OF MONEY AS TO ATTRACT
 THE AUTOMATIC STAY,

THEREFORE, THE ORDER OF JUSTICE DUNPHY IS
 STAYED PENDING APPEAL EXCEPT FOR THE RELIEF IN
 PARA. [124] OF HIS ENDORSEMENT, IF I AM WRONG
 AND THE AUTOMATIC STAY APPLIES TO PARA. [124],
 THEN FOR ALL THE REASONS ABOVE, I LIFT THE
 STAY OF THAT PARAGRAPH.

THE PARTIES ARE TO AGREE ON THE TERMS
 AND TO HOLD THE ^{STATUS quo} OF OVERSIGHT FOR THE BUSINESS PENDING THE
 APPEAL. UNTIL THEN, THE INJUNCTION ON P. 1
 APPLIES.

COSTS RESERVED TO THE APPEAL PANEL.