COURT OF APPEAL FOR ONTARIO

CITATION: Blair v. Ford, 2021 ONCA 841
DATE: 20211125
DOCKET: C68965

Benotto, Miller and Sossin JJ.A.

BETWEEN

R.W. (Brad) Blair

Plaintiff (Appellant)

and

Premier Doug Ford

Defendant (Respondent)

Julian N. Falconer, Ryder Gilliland and Asha James, for the appellant

Gavin Tighe and Alex Melfi, for the respondent

Heard: October 29, 2021 by video conference

On appeal from the orders of Justice Edward Belobaba of the Superior Court of Justice, dated November 23, 2020, November 30, 2020 and December 15, 2020.

Benotto J.A.:

OVERVIEW

[1] In November 2018, Premier Doug Ford ("Ford") announced that an OPP Commissioner had been appointed. Interim Commissioner Brad Blair ("Blair") was not chosen. The new Commissioner was a friend of the Ford family. Blair wrote a scathing letter on official police letterhead to the provincial Ombudsman alleging

improprieties in the selection process and requesting an independent review. The letter was made public.

[2] When reporters questioned Ford about the letter, Ford suggested that Blair had breached the *Police Services Act* R.S.O. 1990, c. P.15 ("*PSA*"). Blair sued Ford for defamation. Ford brought a motion under the provision of s.137.1 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. Section 137.1 was designed to address lawsuits against individuals who speak out about an issue of public interest. This type of motion is often referred to as an anti-SLAPP motion. SLAPP is the acronym for Strategic Lawsuit Against Public Participation.

[3] The action against Ford was dismissed. Blair now appeals. Ford cross-appeals the motion judge's determination with respect to costs.

[4] I would dismiss the appeal and allow the cross-appeal in part.

BACKGROUND

[5] The background facts are not in dispute.

[6] On September 5, 2018, the then OPP Commissioner announced his retirement effective November 2, 2018. The appellant Brad Blair became the Interim Commissioner. A job competition for the permanent position was publicly posted, seeking applications from police officers at a rank of Deputy Police Chief or higher or Assistant Commissioner or higher in a major police service. Within days, the job requirements were amended to remove the minimum rank

requirement. On November 29, 2018, the province announced who the new OPP Commissioner would be. The new appointee was known to be a friend of Premier Ford. The appointee would not have qualified for the job but for the amendment to the qualifications.

[7] On December 11, 2018, Blair sent a nine-page letter to the provincial Ombudsman and released a copy to the public. The letter was sent on OPP letterhead and alleged several improprieties in the appointment process of the OPP Commissioner as well as general misfeasance by Ford.

[8] The Ministry of the Attorney General (MAG) briefed Ford. The Briefing Note concluded that aspects of Blair's letter could arguably constitute breaches of the *PSA Code of Conduct* which prohibits police officers from communicating to the media without proper authority and from disclosing confidential information. The Briefing Note was subject to several qualifications and unknowns, including whether Blair acted in good faith and whether he had proper authority to write the letter.

[9] Ford received the Briefing Note and was made aware of the conclusion some time before December 18, 2018. Within a few days, a retired police officer (unrelated to this action) also filed a complaint with the Ontario Independent Police Review Director. The officer accused Blair of breaching the *PSA* on substantially the same grounds as those listed in the MAG Briefing Note.

[10] On three occasions, reporters questioned Ford about the letter from Blair. Ford said the following:

- December 18, 2018:

> You know my friends this is gonna move forward. I could sit here and give you all the items that weren't accurate in that Letter and there's endless ones. I could give you a list of all the…the Police Act that was broken throughout that whole Letter, but none of you want to report on that.
>
> So, what I'm gonna do, I'm taking the high road. I'm gonna take the high road and let the review go through.

- January 14, 2019:

> Well, I am not surprised that Global has asked me at an automotive show like this. But anyways run through the proper process and [the family friend] was the person they choose, and I was thoroughly disappointment (sic) with uh Brad Blair uh you know the way he has been going on. Breaking the Police Act numerous times is disturbing to say the least.

- January 14, 2019:

> It's unfortunate that one person has sour grapes, and it is very disappointing actually, and reacting the way he's been reacting and breaking the Police Act numerous times. Someone needs to hold him accountable I can assure you of that.

[11] Blair was fired from the OPP in March 2019 for reasons unrelated to Ford's statements. In a separate action, he is suing Ford for approximately $15 million.

[12] Ultimately, a different person – not the family friend – was appointed as OPP Commissioner.

[13] Blair sued for defamation on the basis of Ford's three statements. Ford brought a motion to dismiss the action pursuant to s. 137.1.

[14] There was extensive evidence filed on the motion with resulting cross-examinations and demands for production. Significant legal fees were incurred. Blair brought preliminary motions relating to Ford's refusals to answer questions and requesting more time for further examinations.

[15] The motion judge dismissed the preliminary motions on November 23 and 30, 2020. He heard the s. 137.1 motion on December 4, 2020 and dismissed the action. The motion judge deviated from the presumptive award of full indemnity costs and awarded Ford partial indemnity costs based on the motion judge's own calculations. He also ordered that half of the costs be paid immediately with the other half payable when Blair's separate action was settled or disposed of.

[16] Blair appeals the preliminary motions and the main motion. Ford cross-appeals the order for costs on the main motion.

THE NATURE OF THE S.137.1 MOTION

[17] Section 137.1 was meant to address SLAPP lawsuits. These lawsuits are described as follows in *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22, 449 D.L.R. (4th) 1, at para. 2:

> SLAPPs are generally initiated by plaintiffs who engage the court process and use litigation not as a direct tool to vindicate a *bona fide* claim, but as an indirect tool to limit the expression of others. In a SLAPP, the claim is merely a façade for the plaintiff, who is in fact manipulating the judicial system in order to limit the effectiveness of the opposing party's speech and deter that party, or other potential interested parties, from participating in public affairs.

[18] Section 137.1 allows a defendant to move at an early stage to dismiss such a lawsuit. A motion under s. 137.1 to dismiss such a lawsuit involves a shifting burden and a framework that was set out in *Pointes Protection*, at para. 18:

> In brief, s. 137.1 places an initial burden on the moving party – the defendant in a lawsuit – to satisfy the judge that the proceeding arises from an expression relating to a matter of public interest. Once that showing is made, the burden shifts to the responding party – the plaintiff – to satisfy the motion judge that there are grounds to believe the proceeding has substantial merit and the moving party <u>has no valid defence</u>, and that the <u>public interest in permitting the proceeding to continue outweighs the public interest in protecting the expression</u>. If the responding party cannot satisfy the motion judge that it has met its burden, then the s. 137.1 motion will be granted, and the underlying proceeding will be consequently dismissed. It is important to recognize that the final weighing exercise under s. 137.1(4)(b) is the fundamental crux of the analysis … legislative debates emphasized balancing and proportionality between the public interest in allowing meritorious lawsuits to proceed and the public interest in protecting expression on matters of public interest. Section 137.1(4)(b) is intended to optimize that balance. [Emphasis added.]

[19] Often a SLAPP is used to protect speech and combat a power imbalance sometimes present in defamation cases, where the plaintiff has significant resources and the defendant is vulnerable.

DECISION OF THE MOTION JUDGE

[20] The motion judge recognized that although the action did not possess the classic hallmarks of a SLAPP, the provisions of s. 137.1 of the *Courts of Justice Act* applied because the expression involved public interest.

[21] Following the provisions in the *Act*, he dismissed the defamation action because:

(i) Ford had a "valid defence" to the action; and

(ii) the public interest in protecting Ford's expression outweighed the public interest in allowing the action to continue.

[22] In considering "valid defence", the motion judge concluded that Blair did not show that the defence of fair comment had no real prospect of success. He also found that the expressions by Ford were devoid of malice. When he weighed the public interests, the motion judge concluded that Blair did not suffer harm so serious that the public interest in permitting his defamation action outweighed the public interest in protecting Ford's expression. He also concluded that there would be limited public interest in allowing the defamation action to continue when Blair was simultaneously pursuing a different action seeking recovery for essentially the

same harm. On the other hand, there was significant public interest in hearing Ford's comments about Blair's letter. The weighing of public interests favoured Ford.

[23] Ford sought a full indemnity costs award of $578,194.86. The motion judge concluded the appropriate scale was partial indemnity. Ford's partial indemnity costs were $357,250.48. The motion judge reduced these costs to $320,000, and then further reduced the costs to $130,000, with $65,000 to be payable immediately and $65,000 payable when the plaintiff's wrongful dismissal action settled or was finally adjudicated.

ISSUES

[24] The following issues are raised by the appeals:

(i) Does this court have jurisdiction to hear the appeal from the preliminary orders?

(ii) Did the motion judge err in his consideration of s. 137.1?

(iii) Did the motion judge err in his determination with respect to costs?

ANALYSIS

(1) Does this court have jurisdiction to hear the appeal from the preliminary orders?

[25] Before hearing oral submissions with respect to the appeal, the parties were cautioned by the Senior Legal Officer that this court may not have jurisdiction over

the preliminary orders. The parties agreed to file written submissions with respect to jurisdiction. The court reviewed the written submissions and heard oral submissions on the matter. The parties were advised during the hearing that, for reasons to follow, this court lacks jurisdiction with respect to the preliminary orders.

[26] The preliminary orders were with respect to refusals to answer questions and provide certain legal documents (November 23, 2020) and with respect to further cross-examination (November 30, 2020). They are interlocutory orders. An appeal from an interlocutory order of a judge lies to the Divisional Court with leave pursuant to s. 19(1)(b) of the *Courts of Justice Act*. Leave must be sought within 15 days pursuant to r. 61.03(1)(b) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. Leave was not sought.

[27] The appellant submits that the interlocutory orders are interrelated with the appeal and that leave would “inevitably” have been granted. He argues that this court should therefore assume jurisdiction. This argument was rejected for two reasons.

[28] First, this proposal has been repeatedly rejected by this court. The court said the following in *Mader v. South Easthope Mutual Insurance Company*, 2014 ONCA 714, 123 O.R. (3d) 120, at para. 55:

> Only if leave is obtained from the Divisional Court can the appeal be combined with an appeal that lies to Court of Appeal in the same proceeding under s. 6(2) of the *Courts of Justice Act*: *Cole v. Hamilton (City)* (2002),2002

> CanLII 49359 (ON CA), 60 O.R. (3d) 284, [2002] O.J. No. 4688 (C.A.), at paras. 11, 15.

And said the following in *Brown v. Hanley,* 2019 ONCA 395, at para. 19:

> In general, where an order has both interlocutory and final portions, the appeal lies to this court only from the final portion of the order: *Cole v. Hamilton (City)* (2002), 2002 CanLII 49359 (ON CA), 60 O.R. (3d) 284 (C.A.), at para. 9. Leave to appeal from the interlocutory portion must be obtained from the Divisional Court, at which point a party may move to have the appeals heard together in this court: *Azzeh v. Legendre,* 2017 ONCA 385, 135 O.R. (3d) 721, at para. 25; *Courts of Justice Act,* R.S.O. 1990, c. C.43, ss. 6 and 19(1)(b).

[29] Second, the preliminary orders were dated November 23 and 30, 2020. The s. 137.1 motion was heard on December 4, 2020. Had the interim relief sought been integral to the main motion, the appellant could have – but did not – ask for an adjournment so that leave to the Divisional Court could be sought. It is not appropriate to await the outcome of the motion to then assert that the issue is intrinsically interrelated.

[30] For these reasons, the appeals from the preliminary orders were quashed.

(2) Did the motion judge err in his consideration of s. 137.1?

[31] The parties agreed that the first threshold – that the expression relates to a matter of public interest – was met. The burden then shifted to Blair to satisfy the motion judge that there are grounds to believe the proceeding has substantial merit

and Ford has no valid defence, and that the public interest in permitting the proceeding to continue outweighs the public interest in protecting the expression.

[32] Blair submits that the motion judge erred by:

(i) Ignoring the indicia of a SLAPP in his s. 137.1 analysis.

(ii) Using the wrong test for "no valid defence" and then misconstruing the defence of "fair comment".

(iii) Incorrectly finding that the public interest in permitting the proceeding to continue outweighs the public interest in protecting the expression.

[33] I turn to these issues now.

(1) Indicia of a SLAPP

[34] The motion judge recognized that the action was "not, strictly speaking, a SLAPP suit" because Blair was not a large and powerful organization using litigation to intimidate and silence a vulnerable opponent. He determined that, nonetheless, because Ford's expressions relate to public interest, s. 137.1 was engaged.

[35] The appellant submits that the motion judge's overall approach to s. 137.1 was flawed because, though the motion judge found that the appellant's claim did not have the indicia of a SLAPP, he did not use this finding in his analysis of s. 137.1. In my view, the appellant is implicitly submitting that s. 137.1 did not apply at all. But he further says that even if it did apply, the fact that it did not possess all

the indicia of a SLAPP should have been considered in the analysis by the motion judge.

[36] I disagree with both propositions.

[37] The fact that the usual indicia of a SLAPP were not present does not mean that s. 137.1 does not apply. In this regard the appellant is importing a requirement that does not exist in the statute or in the jurisprudence. The Supreme Court has clarified that s. 137.1 should be broadly construed to apply to proceedings that arise from expression. As the motion judge articulated, the legislature specifically avoided reference to the term “SLAPP” in the provision. In *Pointes Protection*, at para. 24 the Supreme Court specified the following:

> What is crucial is that many different types of proceedings can arise from an expression, and the legislative background of s. 137.1 indicates that a broad and liberal interpretation is warranted at the s. 137.1(3) stage of the framework. This means that proceedings arising from an expression are not limited to those *directly* concerned with expression, such as defamation suits. A good example of a type of proceeding that is not a defamation suit, but that nonetheless arises from an expression and falls within the ambit of s. 137.1(3), is the underlying proceeding here, which is a breach of contract claim premised on an expression made by the defendant … Indeed, the [Anti-SLAPP Advisory Panel: Report to the Attorney General] explicitly discouraged the use of the term “SLAPP” in the final legislation in order to avoid narrowly confining the s. 137.1 procedure … and the legislature obliged. [Emphasis added.]

[38] Nor do I accept the appellant's submission that the indicia of a SLAPP should have been specifically addressed at each step in the judge's analysis. This too has been clarified in *Pointes Protection*, at paras. 78-79:

> I note that in *Platnick v. Bent*, 2018 ONCA 687, 426 D.L.R. (4th) 60, at para. 99, Doherty J.A. made reference to recognized "indicia of a SLAPP suit" (emphasis omitted). He recognized four indicia in particular: (1) "a history of the plaintiff using litigation or the threat of litigation to silence critics"; (2) "a financial or power imbalance that strongly favours the plaintiff"; (3) "a punitive or retributory purpose animating the plaintiff's bringing of the claim"; and (4) "minimal or nominal damages suffered by the plaintiff" (para.99). Doherty J.A. found that where these indicia are present, the weighing exercise favours granting the s. 137.1 motion and dismissing the underlying proceeding…
>
> I am of the view that these four indicia may bear on the analysis *only to the extent* that they are tethered to the text of the statute and the considerations explicitly contemplated by the legislature. This is because the s. 137.1(4)(b) stage is fundamentally a public interest weighing exercise and not simply an inquiry into the hallmarks of a SLAPP. Therefore, for this reason, the only factors that might be relevant in guiding that weighing exercise are those tethered to the text of s. 137.1(4)(b), which calls for a consideration of: the harm suffered or potentially suffered by the plaintiff, the corresponding public interest in allowing the underlying proceeding to continue, and the public interest in protecting the underlying expression. [Emphasis in original.]

[39] *Pointes Protection* requires the motion judge to "scrutinize" what is really going on in the case before them. The reasons of the motion judge read as a whole indicate that he did just that. The motion judge's comment that the "defamation

action is not, strictly speaking a SLAPP" because "the plaintiff is not a large and powerful entity that is using litigation to intimidate a smaller and more vulnerable opponent" confirm that he was alive to any perceived power imbalance that the appellant references.

[40] I would not give effect to this ground of appeal.

(2) Test for "no valid defence" and consideration of "fair comment"

[41] Blair had the burden to show that the defence put forward by Ford had "no real prospect of success": see *Pointes Protection*, at paras. 50, 60. The motion judge described a "real prospect of success" as meaning "a solid prospect of success" and "less than a "likelihood of success" but more than merely "some chance of success" or even "a reasonable prospect of success."

[42] The appellant submits that this is the wrong test. He says it raised the burden on him and that he should have only been required to prove that a reasonable trier of fact could reject the defences advanced by Ford. The appellant relied on *Bondfield Construction Company Limited v. The Globe and Mail Inc.,* 2019 ONCA 166, 144 O.R. (3d) 291 to support this argument.

[43] The test established by this court in *Bondfield* was refined in *Pointes Protection*. The perspective to apply is not that of a reasonable trier at a subsequent trial, but rather the subjective perspective of the motion judge. *Pointes Protection* clarifies the following at para. 41:

> Importantly, the assessment under s. 137.1(4)(a) must be made from the motion judge's perspective. With respect, I am of the view that the Court of Appeal for Ontario incorrectly removed the motion judge's assessment of the evidence from the equation in favour of a theoretical assessment by a "reasonable trier" … The clear wording of s. 137.1(4) requires "the judge" hearing the motion to determine if there exist "grounds to believe". Making the application of the standard depend on a "reasonable trier" improperly excludes the express discretion and authority conferred on the motion judge by the text of the provision. The test is thus a subjective one, as it depends on the motion judge's determination.

[44] I do not agree that the motion judge used the wrong test or raised the bar for Blair with respect to "valid defence." While the motion judge did not track the wording in *Pointes Protection,* his analysis makes it clear that he found that Blair did not demonstrate that Ford's defence of fair comment had no real prospect of success.

[45] There are five elements to the defence of fair comment:

(i) the comment must be on a matter of public interest;

(ii) the comment must be based on fact;

(iii) the comment, although it can include inferences of fact, must be recognizable as comment;

(iv) the comment must be one that any person could honestly make on the proved facts; and

(v) the comment was not actuated by express malice.

[46] The appellant submits that the motion judge erred because: (i) he relied on the compliant by made by another officer; (ii) the statements were not recognizable as comment; and (iii) the statements were demonstrative of malice.

[47] The motion judge concluded that the comments were ones that any person could have made on the facts. He relied on the complaint made by a retired police officer based on the same conduct by Blair. The appellant submits that this was an error because this complaint post-dated the impugned comments by Ford. This objection by the appellant is of no moment in light of the motion judge's findings based on Ford's evidence that he had an honest belief in the truth of his statements.

[48] Blair submits that a reasonable member of the public would infer that Blair had been tried and convicted of breaking the *PSA*.

[49] The motion judge concluded that no reasonable journalist or member of the public would have taken the defendant's statements that the plaintiff "broke the Police Act" as meaning that the plaintiff had already been tried and convicted of breaking this law. This was his finding to make and it is entitled to deference.

[50] In any event, Blair's submission in this regard is at odds with Ford's statements that: "I'm gonna take the high road and let the review go through" (December 18) and "Someone needs to hold him [Blair] accountable" (January 18).

Both these statements make clear that a formal legal process had not yet taken place.

[51] With respect to malice, the appellant submits that Ford was reckless in relying on the MAG Briefing Note, which was qualified. Again, I do not agree.

[52] The motion judge accepted Ford's evidence that he reasonably relied on the MAG Briefing Note when he made the impugned public statements and that he honestly believed that Blair had breached the *PSA*.

[53] It must also be remembered that the Briefing Note also said that Blair's letter clearly disclosed confidential information related to the OPP, including most notably the following:

(i) details about the process by which Commissioner was selected;

(ii) details about matters related to OPP security arrangements for the Premier; and

(iii) that these disclosures could be construed as a breach of section 2(1)(e) of the *PSA Code of Conduct* if they were not made with proper authority.

[54] Finally, the motion judge had the opportunity to view the videos of the three media events. He concluded that Ford spoke calmly, without emotion and without evidence of any retaliation or reprisal. These conclusions are entitled to deference.

[55] I would not give effect to these grounds of appeal.

(3) Weighing the two public interests

[56] While the above conclusions were sufficient to dismiss the action, the motion judge proceeded with the last step of s. 137.1(4)(b) when he balanced the public interests. I will do the same.

[57] Blair was required to satisfy the court that the harm he suffered as a result of Ford's expression is sufficiently serious that the public interest in permitting the action to continue outweighs the public interest in protecting that expression.

[58] In *Pointes Protection*, at para. 68 the Supreme Court noted that before the weighing exercise begins, the plaintiff must show two things:

(i) the existence of some harm; and

(ii) that the harm was caused by the defendant's expression.

[59] The appellant submits that the motion judge erred by finding no evidence of either harm or causation. He claims the motion judge ignored his affidavit evidence outlining the emotional harm and the damage to his reputation. The motion judge found only bald assertions of emotional or psychological harm, and found no evidence of any resulting financial or economic harm. There is no evidence that the plaintiff was disciplined by the OPP for "breaching the *PSA*", that he was suspended from his duties because of these allegations, or that he lost any pay. The claim of a lost job opportunity because of the defendant's *PSA* allegations is also without credible evidentiary support.

[60] The motion judge concluded that, to the extent that there was harm, it is captured by the multi-million-dollar lawsuit that Blair initiated. A draft statement of claim was before the motion judge. The statement of claim has now been issued. Although the motion judge referred to it as a wrongful dismissal action, the issued claim includes damages for misfeasance in public office, negligence, negligent misrepresentation, intentional infliction of mental suffering, *Charter* breaches, and damages of approximately $15 million including special, punitive, and exemplary damages.

[61] The motion judge said the following:

> …there is little to no public interest in permitting the defamation action to continue when the alleged loss or damage is the subject of another action that will shortly be proceeding in this court.

[62] Balanced against the importance of freedom of expression, the matters raised are of considerable public interest that justify expression and debate in the public forum. The motion judge's finding – that the harm suffered as a result of Ford's expression is not sufficiently serious that the public interest in permitting the action to continue is outweighed by the public interest in protecting that expression – is a discretionary finding entitled to deference.

[63] I would not give effect to this ground of appeal.

(3) The cross-appeal: did the motion judge err in his determination with respect to costs?

[64] Ford seeks leave to appeal the motion judge's determination with respect to costs. He submits the following:

(i) he was awarded significantly less than the presumptive award of full indemnification set out in s. 137.1(7); and

(ii) the costs order which tethered half of his recovery to another action was in error.

[65] Section 137.1(7) states the following:

> If a judge dismisses a proceeding under this section, the moving party is entitled to costs on the motion and in the proceeding on a full indemnity basis, unless the judge determines that such an award is not appropriate in the circumstances.

[66] Ford claimed full indemnity costs of $578,194.86.

[67] In choosing to reject full indemnity costs, the motion judge said the following:

> In my opinion, a full indemnity costs award is not appropriate on the facts herein because, as I made clear in my reasons for decision, the plaintiff's defamation action was not a SLAPP suit. I found as follows:
>
> The plaintiff is not a large and powerful entity that is using litigation to intimidate a smaller and more vulnerable opponent and silence their public expression.
>
> …
>
> Mr. Blair is not a powerful entity that is suing the Premier to gag his public expression but a genuinely aggrieved individual trying to vindicate what he reasonably believes

> is a *bona fide* defamation claim. Nonetheless, because the impugned public statements made by the defendant relate to a matter of public interest, the s. 137.1 analysis is engaged.

[68] Ford claimed partial indemnity costs of $357,250.48. The motion judge adjusted this and determined that his partial indemnity costs were $320,000. (He found Blair's partial indemnity costs to be $192,000).

[69] The motion judge gave detailed reasons, including his repeated admonishments to counsel that much of the evidence being advanced related to the merits of the defamation action and allegations that were not necessary for the motion. The motion judge described it as an unnecessary "deep dive" into the evidence that greatly increased costs. Applying the considerations of r. 57.01 of the *Rules of Civil Procedure*, he concluded that the appropriate amount for Ford's partial indemnity costs was $130,000.

[70] I see no error in the motion judge's determination which is entitled to a high degree of deference. I would not give effect to this aspect of the cross-appeal.

[71] The order tethering the costs to another action is different. The motion judge gave no reasons for the order requiring half of the costs to be paid immediately and the other half to be paid when Blair's "wrongful dismissal action is settled or finally adjudicated". This condition was added by the motion judge in the last substantive paragraph of his reasons. The parties had no opportunity to address this extraordinary order. Recall that the so called "wrongful dismissal" action had

not even been commenced at the time of the reasons. I would grant the cross-appeal on this basis and amend the costs order to provide that the entire $130,000 award be payable in full as of the date of the order which is February 1, 2021.

CONCLUSION

[72] For these reasons the appeals from the preliminary orders were quashed. I would dismiss the appeal with respect to dismissal of the action and would allow the cross-appeal in part. I would grant leave to appeal the costs, dismiss the appeal with respect to the quantum of costs, and allow the appeal with respect to the timing of the payment.

[73] In accordance with the agreement between counsel, the respondent is entitled to his costs of the appeal fixed at $30,000 inclusive of disbursement and taxes, and there will be no costs of the cross-appeal.

Released: November 25, 2021 MLB

M. L. Benotto J.A.

I agree. J.A.

I agree. Sossin J.A.