

CITATION: *Burns v. Ontario Society for Prevention of Cruelty to Animals*, 2012 ONSC 339
COURT FILE NO.: File 01-0890
DATE: 2012/01/12

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
)
)
STAN BURNS AND BILL MASSEY)
)
Appellants/Responding parties) Non-Represented
- and -)
)
ONTARIO SOCIETY FOR PREVENTION)
OF CRUELTY TO ANIMALS)
)
Respondent/Moving Party) Paula J. Thomas, counsel for the
) Respondent/Moving Party
)
)
) **HEARD:** January 5, 2012 (Brockville)

2012 ONSC 339 (CanLII)

REASONS FOR DECISION ON MOTION

KERSHMAN J.

[1] This motion is brought by the Moving Party to issue a new alias Writ of Seizure and Sale referable to the Order of the Honourable Justice Cosgrove dated February 18, 2002 pursuant to Rule 60.07(2) of the *Rules of Civil Procedure*.

[2] Pursuant to the Order of Cosgrove J. dated February 18, 2002, the Respondents were ordered to pay the Moving Party \$119,518.19 within five days of his decision. A Writ of Seizure and Sale for, *inter alia*, the sum of \$119,518.19 plus interest of 4 percent *per annum* plus costs of \$27,699.26 plus interest of 4 percent *per annum* was issued to the Sheriff of the United Counties of Leeds and Grenville in favour of the Moving Party on July 19, 2004. The Writ expired on July 19, 2010, six years after it was issued. Due to an oversight, the Writ was not renewed

pursuant to Rule 60.07(6) and (8). The reasons for the non-renewal was because neither the Moving Party nor the law firm acting for them at the time received a notice from the Sheriff of the United Counties of Leeds and Grenville that the Writ was expiring.

[3] The Writ of Seizure and Sale expired. The Moving Party brought a motion dated March 15, 2011 to seek leave to issue a Writ of Seizure and Sale. The motion was subsequently amended to issue a new Writ of Seizure and Sale or an alias Writ of Seizure and Sale.

[4] The motion was returnable on April 20, 2011. The motion was adjourned at least twice and was heard on January 5, 2012.

[5] The Moving Party argues that pursuant to Rule 60.07(2) that leave should be granted to issue an alias writ. The Moving Party says that the enforcement is not subject to any conditions and that no monies have been paid on account of the judgment.

[6] Counsel cites a series of cases including: *Shmegilsky v. Slobodzian*, [1964] 1 O.R. 633-635, *McLay v. Molock* (1993), 21 C.P.C. (3d) 189 and *Colombe v. Caughell et al.* (1985), 52 O.R. (2d) 767 for the proposition that a court can grant leave to issue an alias Writ after the expiration of the original Writ of Seizure and Sale.

[7] The motion is opposed by Mr. Burns and Mr. Massey. They argued that the Writ expired and an alias or new Writ of Seizure and Sale should not be issued. The Respondents attempted to raise issues that were unrelated to the motion. The Court advised them that only issues related to the motion would be considered.

Analysis

[8] The Court has reviewed the cases provided. In *Shmegilsky, supra*, Master Marriott said that the Judgment Creditor is entitled to enforce the judgment within 20 years of its date although the Rules required leave to obtain a writ after six years had expired to renew a Writ of Seizure and Sale. In that case, leave was granted to issue a Writ of Seizure and Sale.

[9] In the *McLay* case, the Court referred to *Colombe v. Caughell* in looking at the time between the expiration writ and the presentation for renewal. In the *Colombe* case, it was only

two days. In the *McLay* case, the time lapse was six years. The Court said that since the original Writ had attached, at one time, to the lands in question in that case, the inadvertence of the Plaintiff's solicitors, in failing to renew the writ, the continuing validity of the original judgment, among other things, that it was the Court's view that leave should be granted to issue an alias Writ of Seizure and Sale.

[10] There is another case not mentioned by either party, that being *Canada (Attorney General) v. Palmer-Virgo* (2002), 31 C.P.C. (5th) 143 (C.J.) which also allowed for leave to issue alias Writs of Seizure and Sale. In that case, the alias writs were to take effect the day they were issued out of the Sheriff's office. The Court used its discretion to allow leave to issue the alias Writs of Seizure and Sale.

[11] In the present case, the judgment remains in effect for 20 years from February 18, 2002, following Belleghem J. in *Canada v. Palmer-Virgo*, *supra*. I agree that it would seem incongruous that a judgment can remain in effect for 20 years while a Writ of Seizure and Sale to enforce it cannot be renewed or issued after it has expired even though the judgment to be enforced is still in effect.

[12] This Court is satisfied that not to grant leave to issue an alias Writ of Seizure and Sale would be unjust and would deprive the Moving Party of the fruits of their judgment by way of a Writ of Seizure and Sale (subject to the rights of any intervening third parties). Accordingly, this Court uses its discretion and orders that leave is granted for the Moving Party to issue an alias Writ of Seizure and Sale to take effect the day that it is issued out of the Sheriff's office.

[13] To be clear, the original Writ is not renewed *nunc pro tunc*. This will protect any intervening rights which may have accrued to the parties from the date of the expiry of the original Writ to the date of the issuance of the alias Writ.

[14] The evidence before the Court is that no monies have been paid or have been received to reduce the original judgment, interest or costs. Therefore, the amount set out in the Writ of Seizure and Sale will be limited to the amounts outstanding on the judgment together with interest and costs to the date of the expiry of the original Writ only, i.e. no interest will be

permitted to accrue from the date of expiry of the original Writ to the date of issuance of the alias Writ.

[15] As to the issue of costs, under the circumstances, there will be no order as to costs.

[16] Order accordingly.

Mr. Justice Stanley J. Kershman

Released: January 12, 2012

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