

COURT OF APPEAL FOR ONTARIO

CITATION: Mikhail v. Cole, 2017 ONCA 262

DATE: 20170330

DOCKET: C62690

Feldman, Sharpe, and Roberts JJ.A.

BETWEEN

Michael Mikhail

Appellant
(Plaintiff)

and

Deidre Joyce Cole o/a Deidre Marinelli, Robert Cole,
Mary Lou Bousfield by her Litigation Guardian Robert Cole

Respondents
(Defendants)

Michael Mikhail, in person

Aleksandar Jovanovic, for the respondents

Heard: March 27, 2017

On appeal from the order of Justice Michael R. Gibson of the Superior Court of Justice, dated August 24, 2016.

ENDORSEMENT

[1] The appellant appeals the dismissal of his civil action to obtain damages against his former spouse and her parents for alleged fraudulent concealment of assets. The appellant submits that the motion judge erred in dismissing his action as an abuse of process. He argues that he should be permitted to continue with his action in the interests of justice because he will otherwise be without recourse.

[2] We disagree.

[3] As the motion judge correctly found, the appellant's claim for damages is premised on his alleged entitlement to an equalization payment, which is governed by the *Family Law Act*, R.S.O. 1990, c. F-3, and which therefore can only be pursued in family law proceedings.

[4] The appellant's claim for equalization of net family property is proscribed by s. 7(3) of the *Family Law Act*, which prohibits him from bringing such a claim after the earliest of either two years from the date of the September 27, 2009 divorce order or six years from the date of separation in early 2006. However, the appellant is not necessarily without recourse.

[5] If the appellant can satisfy the criteria for an extension of time under s. 2(8) of the *Family Law Act* to bring an application for equalization under s. 5 of the Act, he may add the respondents as parties to the proceedings under r. 7 of the *Family Law Rules*, O. Reg. 114/99. See also, for example, *Stone v. Stone* (1999), 1999 CanLII 15094 (ON SC), 46 O.R. (3d) 31; aff'd, (2001), 2001 CanLII 24110 (ON CA), 55 O.R. (3d) 491 (C.A.), where affected parties, other than spouses, were named as parties in family law proceedings, in relation to the adjudication of an alleged fraudulent conveyance.

[6] As a result, we see no error in the motion judge's dismissal of the appellant's action. There is no basis to interfere.

[7] Accordingly, the appeal is dismissed.

[8] The respondents are entitled to their partial indemnity costs of the appeal in the amount of \$4,500 inclusive of disbursements and HST.

"K. Feldman J.A."

"Robert J. Sharpe J.A."

"L.B. Roberts J.A."