

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**SHORT TITLE** The Polish Alliance of Canada v. Polish Association of Toronto Limited et al.  
**COURT FILE NO.** CV-08-361644  
June 20, 2014

**BETWEEN:**

THE POLISH ALLIANCE OF CANADA

Plaintiff

– and –

POLISH ASSOCIATION OF TORONTO LIMITED, MAREK  
MIASIK aka MAREK ADAM MIASIK, MARIA MIASIK, JAN  
ARGYRIS aka LOUIS JOHN ELIE ARGYRIS aka LOUIS aka  
JOHN ARGYRIS, WLADYSLAW JASLAN aka WLADYSLAW  
JULIAN JASLAN, HELENA JASLAN, EUGENIUSZ  
SKIBICKI, CZESLAWA ERICKSEN, STANISLAW ROGOZ  
aka STAN ROGOZ, ALBERT JOSEPH FLIS and RICHARD  
RUSEK

Defendants

– and –

POLISH ASSOCIATION OF TORONTO LIMITED, MAREK  
MIASIK aka MAREK ADAM MIASIK, MARIA MIASIK, JAN  
ARGYRIS aka LOUIS JOHN ELIE ARGYRIS aka LOUIS JOHN  
ARGYRIS aka JOHN ARGYRIS, WLADYSLAW JASLAN aka  
WLADYSLAW JULIAN JASLAN, HELENA JASLAN,  
EUGENIUSZ SKIBICKI, CZESLAWA ERICKSEN,  
STANISLAW ROGOZ aka STAN ROGOZ, ALBERT JOSEPH  
FLIS and RICHARD RUSEK

Plaintiffs by Counterclaim

– and –

THE POLISH ALLIANCE OF CANADA, ROBERT  
ZAWIERUCHA, TADEUSZ MAZIARZ, ELIZABETH  
BETOWSKI, DANUTA ZAWIERUCHA, TERESA SZRAMEK,  
ANDRZEJ SZUBA, ADAM SIKORA, ELZBIETA GAZDA,  
STANISLAW GIDZINSKI, STANISLAW IWANICKI and  
TADEUSZ SMJETANA

Defendants by Counterclaim

**BEFORE:** F.L. Myers J.

**COUNSEL:** P. Waldmann, for the plaintiff/moving party.

B. Romano, for the defendants other than Richard Rusek/respondents.

**HEARD:** June 20, 2014

### **ENDORSEMENT**

- [1] The plaintiff seeks directions on an urgent basis concerning the implementation of my Order dated May 27, 2014. In my Reasons for Judgment dated May 27, 2014, I found that certain lands were held in trust for the members of Branch 1-7 of The Polish Alliance of Canada, (the "Branch"). I also found that the defendants had resigned from The Polish Alliance of Canada (the "PAC") and were not proper representatives of the Branch.
- [2] In my Order, I required the PAC to reconstitute the executive of the Branch in accordance with its constitution. To do so, it must determine who the members of the Branch are. In the interim, I required the parties to agree upon a neutral third party to take control of the assets of the Branch pending the election of a new executive. If the parties were unable to agree, I invited them to return to Court to apply for the appointment of a receiver and manager.
- [3] Mr. Romano wrote to Mr. Waldmann on June 6, 2014 to advise, among other things, that "The members of Branch 1-7 will proceed to elect a new executive at the earliest possible date...". On June 12, 2014, he wrote to Mr. Waldmann to advise that notices of a meeting of members of the Branch on June 22, 2014 (i.e. in two days from today) were being delivered and have been published in the newspaper.
- [4] The defendants' counsel has filed an affidavit from Marianne Rabczak. She swears that she became a member of the Branch in 2008. She says that she is a member of the executive of the Branch and that the existing members of the executive other than the defendants have taken control of the Branch. She also notes that the Branch cannot afford the cost of a receiver. In paragraph 16 of her Affidavit, Ms Rabczak says:

Pursuant to the Order of Justice Myers, the existing executives who are not Defendants and other members of the branch began immediate actions to reconstitute our branch to elect a new executive. Pursuant to the constitution of the [*sic*] Polish Alliance of Canada, the membership of the branch is and has always been controlled by the members of each branch.
- [5] The position advanced by Mr. Romano ignores my finding that after the defendants left the PAC, they were no longer representing the Branch. The defendants had no basis to admit Ms

Rabczak to membership to the Branch. The PAC (or Head Executive Board) has never approved her membership even if that constitutional requirement might have been believed to have been a mere rubber stamp in past. As I said in my Reasons, "...no matter what they may call themselves, upon resigning from the PAC they are manifestly no longer 'members of Branch 1-7 of The Polish Alliance of Canada' in whom equitable title to the branch's property rests". The current executive of the organization on whose board Ms Rabczak sits (with or without the defendants) does not have any entitlement to call a meeting of the Branch to reconstitute its executive.

- [6] Mr. Waldmann is also correct that the proposed membership list for the meeting called by Ms Rabczak and her colleagues cannot be a membership list for the Branch. Allowing a meeting based on the list of people whom the current group believe to be members of the PAC would cause nothing but confusion and mischief. Moreover, Mr. Romano points out that there is some urgency afoot. The appeal period from my Order expires in a few days. It is not at all clear how Mr. Romano is purporting to act for the Branch when I have concluded that his clients are not members. He and Mr. Waldmann seem to agree that Mr. Romano may have a conflict in acting for his clients on appeal and then trying at the same time to reconstitute the Branch for others. Mr. Romano says that he acts for PATL which holds the Branch's land in trust for its members and that he can act for the Branch in that capacity. But throughout the trial it was his position that since PATL is not a member of the PAC, it is not subject to regulation under the PAC constitution and I agreed with that submission in my Reasons. There is a void and a need to neutral oversight of the properties and the process of reconstituting the Branch which has become urgent with the passage of time without agreement of the parties. Mr. Waldmann raises the spectre of the invocation of the grievance process in the PAC constitution on membership issues which could take months and result in yet further litigation before a meeting of the branch could be held to elect its new executive. In the meantime there is a rudderless ship and parties who continue to be unable to agree on the time of day.
- [7] Absent agreement on a neutral third party, it is just, convenient and urgent to appoint Collins Barrow Toronto Limited as receiver and manager of the Lakeshore Property (as defined in my Reasons for Judgment), 32 Twenty-Fourth Street and PATL pursuant to Rule 60.02(1)(d), s.101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43 and my Order of May 27, 2014. The Receiver is to hold the properties as a neutral officer of the court and is not to take direction from the PAC, the defendants or anyone else. The receiver is to do as little as it views as reasonably possible to take control of all assets of, or held in trust for, the members of the Branch and to hold those assets pending the election of a new executive of the Branch. It should try to allow ongoing programs and uses of the premises as planned subject always to its reasonable concerns for security and protection of the properties under its control.
- [8] The receiver will also oversee and supervise the efforts by the PAC to reconstitute the Branch and its executive. The receiver shall report to the court as often as it deems advisable

to ensure that the provisions of the court's orders are being observed. The PAC made certain commitments concerning the reconstitution of the Branch that I incorporated into my Order. I expect that my Order will be followed to the letter and in spirit. All that is required for a pre-Agusut 26, 2006 member to be affirmed by the PAC is that he or she did not know that his or her dues were not being forwarded to the PAC. No loyalty oath was proposed by Mr. Waldmann at trial or incorporated into my Order. As to approval of new members in the ordinary course by the PAC as I have ordered, the ordinary course for this organization has not involved an inquisition. The mere fact that someone may have been at a meeting in which the defendants induced him or her to support a change of the name of the Branch to the old name of the "mother branch", for example, is not, to my mind, *ipso facto* proof that those members chose to leave the PAC or are disloyal. I spoke of that event and the defendants' tactical purposes in changing the name of their group in my Reasons for Judgment. There is no indication that the general body of members knew or participated in the tactics of the leadership. All of the principals in this litigation are charismatic leaders with legal teams behind them. The lay members have been caught up in these events. **It was and is my expectation that the reconstitution of the Branch will be conducted as a good faith effort to protect the Polish community of Toronto and in a spirit of reconciliation with the membership at large. The receiver shall ensure that this is so or report to the court any concerns that it may have.**

- [9] Everyone with notice of the receivership order is required to cooperate with the receiver, provide it access to all property of the Branch or its members, including all property being held in trust for the Branch or its members. Everyone with notice of the receivership order shall provide the receiver any and all non-privileged information that it reasonably seeks.
- [10] A retainer of \$25,000 for the receiver's fees and disbursements, subject to assessment, should be paid by the PAC subject to whatever internal rights it may have to seek indemnity from the Branch, if any, once the new executive is in place. The receiver may borrow up to a further \$15,000 from the PAC to fund the fulfillment of its duties. This is a one-time amount and not a revolving credit. The receiver shall have a first fixed charge over the all of the properties under its control as security for its reasonable fees and disbursements as assessed and for its borrowings.
- [11] The receiver and anyone affected by the order appointing it or any exercise or threatened exercise of its powers may seek directions on notice to the receiver and anyone affected by the relief then sought.

[12] It follows that the purported members meeting called for this weekend is a nullity. I prohibit the defendants, Wladyslaw Rabczak, Marianne Rabczak, Marlene Matyszczuk, Teresa Skibicki and anyone with knowledge of this order from holding any meeting or a purported meeting of the members of the Branch and from conducting or purporting to conduct any election of the executive of the Branch.



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F.L. Myers, J.

**Date: June 20, 2014**

**THE POLISH ALLIANCE OF CANADA**  
Plaintiff / Defendants by Counterclaim

and  
**POLISH ASSOCIATION OF TORONTO LIMITED**  
Defendants / Plaintiffs by Counterclaim

Court File No: CV-08-361644

ONTARIO  
SUPERIOR COURT OF JUSTICE  
Proceeding commenced at TORONTO

**MOTION RECORD**

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Lawyer for the Defendants, except Richard Rusek

*Order to go to pay my  
creditor attached on 10/22/12 from  
to which I have endorsed my funds*  
*June 20/12*  
*BB 1/20/12*  
*Comman to Dr  
(Richard Rusek)*