

CITATION: Allen v. Gerstel, 2022 ONSC 6283
COURT FILE NO.: CV-22-685878
DATE: 20221103

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
) *Neil Colville-Reeves*, for the Plaintiff
)
JUDITH ANN ALLEN)
Plaintiff)
)
)
– and –)
) *Daniel Fridmar*, for the Defendant Anthony
) Sinopoli c.o.b. as AFS Contracting and
) Design
ESTHER GERSTEL INC., HAROLD THE)
MORTGAGE CLOSER INC., ANTHONY)
SINOPOLI c.o.b. as AFS CONTRACTING)
AND DESIGN and KAMELE BARRETT)
Defendants) *Michael Suria*, for the Defendant Esther
Gerstel Inc. and Harold the Mortgage Closer
Inc.
) *Demetrios Yiokaris & Niki Manwani*, for the
Defendant Kamele Barrett
)
)
) **HEARD:** November 2, 2022

**REASONS FOR DECISION ON TORONTO STAR REQUEST TO RECORD
PROCEEDINGS**

P.T. SUGUNASIRI J.:

[1] This decision addresses the ability of the media to record court proceedings with their own electronic devices. At the start of the Plaintiff’s motion for a Mareva injunction and other relief, Mr. Donovan from the Toronto Star requested permission to record the proceeding with his own audio recording device pursuant to paragraph 136(2)(b) of the *Courts of Justice Act*. I denied the request orally with reasons. This written decision supplements my oral reasons.

[2] The confusion lies in the seemingly opposing schemes set out in the *Courts of Justice Act* on the one hand, and the court’s *Consolidated Provincial Practice Direction* on the other hand.

[3] Paragraph 136(2)(b) of the *Courts of Justice Act* permits audio recordings of proceedings by journalists “in the manner that has been approved by the judge”. The paragraph both recognizes the open court principle and the media’s important role in disseminating accurate information about court proceedings to the public. It also recognizes that the right to record, is not absolute. The media’s ability to accurately disseminate information must be balanced with protecting the integrity of the court record to ensure public confidence in the administration of justice. That public confidence is in part bolstered by the check and balances in place to limit the number of court recordings that are floating around in the public domain, especially in our sophisticated digital age. In my view, paragraph 136(2)(b) is one such check and balance which gives the presiding judge discretion. This is a discretion conferred by the Legislature and must be given meaning.

[4] *Part VI D of the Consolidated Provincial Practice Direction*, on the other hand, permits the media to use an electronic device in the courtroom and to make an audio recording of the proceeding for the purpose of notetaking. On its face, *Part IV D. of the Consolidated Provincial Practice Direction* appears to give the media an absolute and unfettered right to audio record court hearings. This is at odds with paragraph 136(2)(b) of the *Courts of Justice Act* which makes the ability to record subject to the presiding judge’s approval. As a matter of law, legislation takes precedence over policies and procedures, where they conflict. Ultimate resort is to paragraph 136(2)(b) of the *Courts of Justice Act* that gives the presiding judge discretion to manage audio recordings in the courtroom.

[5] The seemingly unfettered right to record in *Part VI D. of the Consolidated Practice Direction* is also at odds with *Part VI C. of the Consolidated Practice Direction* which provides a controlled procedure for the media to obtain audio recordings of court proceedings. This process protects the integrity of the court record by requiring permission of the judge and a strict undertaking by the requestor, as to its use. Even within this process, the court retains the jurisdiction to refuse access to the audio recording. This procedure within the *Consolidated Provincial Practice Direction* would be largely redundant if the media could by right record any proceeding it attended.

[6] The most harmonious reading of these seemingly disparate provisions is that media does have the ability to record court proceedings with its own electronic devices, but this ability is always subject to the discretion of the presiding judge. In turn the role of the presiding judge is to give effect to the legislation and where possible, the court’s practices and procedures which are designed to inform and guide justice participants. In this case, unlike with most motions, there is an official court reporter recording these proceedings. Court reporters are experienced, dedicated and highly trained professionals who regularly work in our courts. This ensures that there is a fair, complete, and accurate recording of this motion available to the parties, the media and the public. There is no need in these circumstances for there to be a second recording in the hands of Mr. Donovan. The Toronto Star, like the parties, can seek a transcript of the motion to supplement the notes taken at the hearing. I see no reason in this motion to give the Toronto Star greater access to the court record than the parties themselves, who are not by route permitted to record the hearing. It does not thwart Mr. Donovan’s access to the court nor his ability to disseminate information to the public. For these reasons, I deny Mr. Donovan’s request to make his own recording of this proceeding.

Justice P. Tamara Sugunasiri

CITATION: Allen v. Gerstel, 2022 ONSC 6238
COURT FILE NO.: CV-22-685878
DATE: 20221103

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

JUDITH ANN ALLEN

Plaintiff

– and –

ESTHER GERSTEL INC., HAROLD THE
MORTGAGE CLOSER INC., ANTHONY SINOPOLI
c.o.b. as AFS CONTRACTING AND DESIGN and
KAMELE BARRETT

Defendants

REASONS FOR DECISION

Justice P. Tamara Sugunasiri

Released: November 3, 2022