

**CITATION:** Li et al. v. Barber et al.,  
**COURT FILE NO.:** CV-22-88514-CP  
**DATE:** 2023/09/18

**SUPERIOR COURT OF JUSTICE – ONTARIO**  
**Proceeding under the Class Proceedings Act, 1992**

**RE:** ZEXI LI, HAPPY GOAT COFFEE COMPANY INC, 7983794 CANADA INC.  
(c.o.b. as UNION: LOCAL 613) and GEOFFREY DEVANEY, Plaintiffs

**AND:**

CHRIS BARBER, BENJAMIN DICHTER, TAMARA LICH, PATRICK KING,  
JAMES BAUDER, BRIGITTE BELTON, DANIEL BULFORD, DALE ENNS,  
CHAD EROS, CHRIS GARRAH, MIRANDA GASIOR, JOE JANZEN, JASON  
LAFACE, TOM MARAZZO, RYAN MIHILEWICZ, SEAN TIESSEN,  
NICHOLAS ST. LOUIS (a.k.a. @NOBODYCARIBOU), FREEDOM 2022  
HUMAN RIGHTS AND FREEDOMS, GIVESENDGO LLC, JACOB WELLS,  
HAROLD JONKER, JONKER TRUCKING INC., and BRAD HOWLAND,  
Defendants

**BEFORE:** C. MacLeod RSJ

**COUNSEL:** Christine Johnson, for the Plaintiffs

James Manson for the Defendants, Lich, Marazzo, Barber, Tiessen, Gasior,  
Bulford, Mihilewicz, Enns, Freedom 2022 Human Rights and Freedoms, Jonker,  
Jonker Trucking Inc., and Howland

Jim Karahalios for the Defendants, GiveSendGo LLC, Wells, Garrah, St. Louis,  
Dichter, and Belton

**HEARD:** September 18, 2023

**CASE MANAGEMENT ORDER AND DIRECTION**

[1] At the case conference in July, I scheduled the “anti SLAPP motion” which Mr. Manson and Ms. Overwater wish to bring on behalf of their clients pursuant to s. 137.1 of the *Courts of Justice Act*. The motion was to be returnable on October 11, 2023.

[2] Mr. Manson has run into an unanticipated issue because he wishes to rely upon affidavits from Ms. Lich, Mr. Barber and Mr. King. Currently Ms. Lich and Mr. Barber are in the middle of their criminal trial before the Ontario Court of Justice and their criminal counsel does not wish them to swear affidavits about the events relating to the convoy until those trials are over. Mr. King also faces charges but the trial is not yet underway.

[3] Since Ms. Lich and Mr. Barber are moving parties represented by Mr. Manson, it would be entirely reasonable for the court to hold the parties to the timetable established in July and to decline the request for adjournment. There is no principle that a civil proceeding should be put on hold pending the outcome of a criminal proceeding. To the contrary, there is longstanding jurisprudence that the discretion to stay a civil proceeding pending the outcome of a criminal matter should be exercised only in the rarest of instances. See for example, *Smerchanski v. Lewis*, (1980) 31 OR (2d) 705 (CA) @ para 70 and *TFP Investments Inc. (Trustee of) v. Singhal*, 1991 CarswellOnt 169, [1991] O.J. No. 323 (CA) @ para 12 but it is not appropriate to determine that question definitively on a case conference.

[4] In an effort to be completely fair to the moving party defendants, I am prepared to postpone the argument for a brief period of time but this should not be taken as determining that the motion cannot proceed while the criminal matters are pending. Nor should it be taken as a precedent for a rolling series of adjournments.

[5] The plaintiffs object to postponement of the motion because a motion launched under s. 137.1 operates as a stay of the proceedings. That is correct and it is also correct that the legislation requires that such a motion be brought and determined promptly. I do not however view the short adjournment I am granting as doing violence to this principle. The next step in the class proceeding (apart from Mr. Karahalios proposed motion to change the venue) is the scheduling of the certification motion and a timetable leading up to it.

[6] The plaintiffs are benefitting from the postponement of the running of the limitation period which accompanies the commencement of a proposed class proceeding and, also have been relieved from the requirement to bring the certification motion within one year of commencing the action because of the various preliminary motions including this one. The delay between October and December will not prejudice the plaintiffs in any significant manner.

[7] I have therefore adjourned the motion from the October 11<sup>th</sup> date established in July to December 14<sup>th</sup>, 2023 (and if necessary, December 15<sup>th</sup>, 2023). Counsel believe they can work out a modified timetable. I may be spoken to further if that turns out not to be the case. The terms of the July 27<sup>th</sup> order otherwise remain in force.

  
Justice C. MacLeod

**Date:** September 19, 2023