

COURT OF APPEAL FOR ONTARIO

CITATION: Metropolitan Toronto Condominium Corporation
No. 879 v. Mereshensky, 2012 ONCA 73
DATE: 20120202
DOCKET: M40496 (C54253)

Simmons, Armstrong and Juriansz JJ.A.

BETWEEN

Metropolitan Toronto Condominium Corporation No. 879

Applicant (Respondent in Appeal)

and

Lyudmila Mereshensky, Ahuva Rozenfeld and Yakov Mereshensky

Respondents (Appellants)

Megan Mackey, for the applicant

Yakov Mereshensky, in person

Heard and endorsed: February 1, 2012

An application for an order to quash the Amended Notice of Appeal of Yakov Mereshensky.

APPEAL BOOK ENDORSEMENT

[1] The court file includes an affidavit of service indicating the amended motion record and factum were served under the rules. As a general rule, no appeal lies from a judge's decision to refuse to grant leave to appeal under s. 45 of the *Arbitration Act*. There is an exception to the general rule where the judge

on the leave application mistakenly declines jurisdiction. See: *Hillmond Investments Ltd. v. Canadian Imperial Bank of Commerce* (1996), 29 O.R. (3d) 612 (C.A.) and *Denison Mines Ltd. v. Ontario Hydro* (2001), 56 O.R. (3d) 181 (C.A.). Here, the leave judge did not decline jurisdiction but considered the leave application fully. As the exception to the general rule does not apply, this appeal does not lie. It is therefore quashed.

[2] As a result, it is unnecessary that we deal with motion M40544.

[3] Costs of the appeal and all motions are to the condominium corporation on a partial indemnity scale fixed at \$1,500 inclusive of all disbursements and applicable taxes.