

COURT OF APPEAL FOR ONTARIO

CITATION: Evertz Technologies Limited v. Providius Corp., 2026 ONCA 628

DATE: 20260903

DOCKET: COA-24-CV-1252

Tulloch C.J.O., Lauwers, Sossin, Wilson and Pomerance JJ.A.

BETWEEN

Evertz Technologies Limited and Evertz Microsystems Limited

Plaintiffs/Responding Parties (Appellants)

and

~~Lawo AG, Lawo Holding AG, Lawo Inc., Lawo Group USA, Inc., Lawo Corp.,~~
Providius Corp., Tony Zare, (a/k/a Antony Zarezadeqan), Ayman Al Khatib,
Jackson Wiegman and Albert Faust

Defendants/Moving Parties (Respondents)

James C. Orr and Jonathan H.W. Careen, for the appellants

Anu Koshal, Rachel Chan and Almut MacDonald, for the respondents

Heard: October 23-24, 2025

On appeal from the order of Justice Colin P. Stevenson of the Superior Court of Justice, dated October 25, 2024, with reasons reported at 2024 ONSC 5778.

COSTS DECISION

[1] At para. 169 of the appeal decision reported at 2026 ONCA 352, we permitted costs submissions where the parties could not agree. This is the costs decision as it relates to Evertz and Providius.

[2] Providius successfully obtained a stay of Evertz's action. The motion judge applied the rule in *Handley Estate*. He awarded Providius costs on a partial indemnity basis in the amount of \$60,000, all-inclusive. He refused Providius's request for costs on a substantial indemnity basis: "I am not prepared to say that Evertz's conduct was 'reprehensible, scandalous or outrageous conduct,' which is the type of conduct which is necessary for a costs award on a substantial indemnity basis."

[3] Providius seeks costs of the appeal on a substantial indemnity basis at \$190,000, all-inclusive.

[4] Evertz agrees that Providius is entitled to the costs of the appeal but argues that Providius is not entitled to costs on a substantial indemnity basis, arguing that the appropriate amount is \$25,000, all-inclusive. In support of this position, Evertz acknowledges that "Providius was completely successful in responding to Evertz's appeal of the stay." However, Evertz argues that "Providius was unsuccessful on the central common issue of whether the rule set out in *Handley Estate* was wrongly decided". Evertz argues that, in the oral hearing of the appeal, Providius spent three-quarters of its time on the common issue and one-quarter responding to Evertz's appeal.

[5] This submission rather understates what was at stake for Providius in the appeal. We accept Providius's explanation for the time spent on the appeal:

Given the stakes of this appeal for Providius, its counsel took the lead role in preparing both the shared issues factum and its own factum, and also took the lead in preparing and delivering the oral argument for the shared issues. By contrast, Evertz's counsel did not make submissions in relation to the shared issues, yet still incurred approximately \$70,000 in fees.

[6] Evertz argued in its appeal factum that it complied with the rule in *Handley Estate* and that the motion judge's decision "represents a dramatic, unwarranted expansion of the rule." Evertz also argued that leaving the stay in place if *Handley Estate* were overturned would be "harsh, drastic, and unnecessary in the circumstances of this case." Evertz asked that the appeal be allowed and the motion to stay be dismissed with costs.

[7] Our view of Evertz's litigation conduct is set out in paras. 121-122 and 124-125 of the appeal decision:

[121] The abuse of process doctrine is engaged because Evertz repeatedly misled Providius and the court that the settlement agreement need not be disclosed because it related solely to the Delaware Action. In short, the settlement agreement did change the adversarial position of the settling defendants into a cooperative one, rendering the failure to fully disclose an abuse of process.

[122] With respect to the appropriate remedy, the motion judge did not comment on whether he would have awarded a lesser remedy given that the stay under *Handley Estate* was automatic. He also made no express finding of prejudice given that it was unnecessary under *Handley Estate*. However, his findings of fact support the conclusion that Evertz's conduct caused prejudice to

Providius, and that this is one of the “clearest cases” in which a stay is warranted.

...

[124] Prejudice to the parties is one of the factors that can influence whether an abuse of process exists, but it is not a prerequisite. In this case, it is especially problematic in terms of prejudice to the administration of justice that Evertz misled the court.

[125] Evertz’s misleading of the court, combined with the burden of unnecessary litigation which Evertz caused and the unacceptable delay, is sufficient to ground a finding of abuse of process in this case. We are not satisfied that a lesser remedy such as costs would be appropriate given the severity of the abuse of process in Evertz misleading the court. We, therefore, see no reason to remit the case to the motion judge for evidence and a determination of whether Providius was prejudiced by Evertz’s failure to disclose in a timely way.

[8] Given the stakes for Providius on the appeal, the extra work entailed in defending the motion judge’s decision, Evertz’s own expenditure on the appeal, and Evertz’s lack of analysis of Providius’s bill of costs, we fix Providius’s costs at \$110,000, all-inclusive, on a partial indemnity basis.

“M. Tulloch C.J.O.”

“P. Lauwers J.A.”

“L. Sossin J.A.”

“D.A. Wilson J.A.”

“R. Pomerance J.A.”