Court of Appeal File No. COA-26-OM-0163 (M56997)
Superior Court File No. CV-23-00710795-00CL

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant (Respondent)

-and-

2011836 ONTARIO CORP., JEFFERSON PROPERTIES LIMITED PARTNERSHIP, 1000162801 ONTARIO CORP., AMERCAN CORPORATION and 1000199992 ONTARIO CORP.

Respondents (Respondents)

BOOK OF AUTHORITIES OF THE RECEIVER (AS MOVING PARTY AND RESPONDING PARTY)

May 7, 2026

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INDEX

TAB 1

CITATION: 2528092 Ontario Inc. v. Serge Landry, 2025 ONSC 5944
COURT FILE NO.: CV-18-00077299-0000
DATE: 20251028

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: 2528092 Ontario Inc., Plaintiff

AND:

Serge Landry, Defendant

BEFORE: Associate Justice Fortier

COUNSEL: Ryan D. Garrett for the Moving Party, the Defendant, Serge Landry

Quinelle Boudreau, for the Responding Party, the Plaintiff 2528092 Ontario Inc.

HEARD: June 3rd, 2025

ENDORSEMENT

Motion Overview

[1] The defendant, Serge Landry, brings a motion seeking an order that the plaintiff, 2528092 Ontario Inc. ("252 Ontario"), be required to post security for costs pursuant to Rule 56 of the *Rules of Civil Procedure* RRO 1990, Reg 194.

Background

[2] This action concerns the purchase of a mixed-use, six-unit property located at 17 Marlborough Street ("the Property") by 252 Ontario from Mr. Landry on August 8, 2016. The purchase price was $1,770,000, financed by a mortgage in the principal amount of $1,771,393.79 granted by S.G. Bad'aan Holdings Limited ("SGB Holdings"), a closely held family corporation.

[3] Amira Bad'aan is the sole director, officer, and shareholder of 252 Ontario. Her father is the sole director and officer of SGB Holdings. On August 8, 2017, a second mortgage in the amount of $268,000 was placed on the Property by SGB Holdings.

[20] The Plaintiff admits that 252 Ontario was incorporated solely to acquire the Property, and that the Property was sold at a loss after the claim was commenced. 252 Ontario conceded on examinations for discovery that it owns no other assets or property. There is no evidence before the court that the Plaintiff has any income source. Accordingly, based on the record before me, I find that the Defendant has met his onus at the first stage of the analysis and that there is good reason to believe that 252 Ontario lacks sufficient assets in Ontario to pay the costs of the Defendant.

Would an order for security for costs be unjust?

[21] At the second state of the analysis, the onus shifts to 252 Ontario to demonstrate that an order for security for costs would be unjust. In response, 252 Ontario argues that security for costs would be unjust because:

a) The defendant delayed in bringing the motion without justification.

b) The motion is an attempt by the Defendant to exert financial pressure on the Plaintiff to prevent or dissuade it from pursuing this litigation.

c) The Defendant has not provided evidence of anticipated trial costs.

[22] The relevant principles in assessing delay have been summarized in *Wilson Young & Associates Inc. v. Carleton University*, 2020 ONSC 4542 at para. 59 as follows:

(a) A motion for security for costs must be brought promptly by the defendant upon discovering a reasonable basis for doing so. A plaintiff ought not be placed in the position of having to post security for costs after having incurred significant expense in advancing the lawsuit.

(b) The moving party should not be entitled to security for costs if there is evidence that the delay in bringing the motion caused prejudice to the plaintiff.

(c) Even in the absence of prejudice to the plaintiff, a failure by the moving party to provide an explanation for the delay is fatal to the motion.

[23] While delay may be an unfavorable factor against the moving party, it is not necessarily detrimental to the motion for security for costs. The delay must be unreasonable and unexplained. To succeed on this basis, the plaintiff must demonstrate actual irreparable prejudice resulting from the delay (*Tabrizi v Kaushal et al*, 2017 ONSC 7660 at paras 24 and 26).

[24] The Plaintiff argues that it would be unjust to order security for costs because of the Defendant's significant and unexplained delay in bringing the motion. According to the Plaintiff, the Defendant has known since at least April 2022, during the examination for discovery of 252 Ontario's representative, that the Property was the Plaintiff's only asset and had been sold at a

TAB 2

CITATION: 394 Lakeshore Oakville Holdings Inc. v. Misek, 2010 ONSC 7238
COURT FILE NO.: 10-CV-402867
DATE: 20101231

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

394 LAKESHORE OAKVILLE HOLDINGS INC.

Plaintiff

- and -

CAROL ANNE MISEK and JANET PURVIS

Defendants

COUNSEL:

William A. Chalmers, for the Plaintiff

O.J. No. 1881, 51 O.R. (2d) 23 (Ont. H.C.J.); *Skidmore v. Blackmore* (1995), 122 D.L.R. (4th) 330 (B.C.C.A.).

[11] Section 131(1) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 provides that "[s]ubject to the provisions of an Act or rules of court, the costs of and incidental to a proceeding or a step in a proceeding are in the discretion of the court, and the court may determine by whom and to what extent the costs shall be paid".

[12] In the exercise of the court's discretion, the most general rule is that costs at a partial indemnity scale follow the event, which is to say that normally costs are ordered to be paid by the unsuccessful party to the successful party on a partial indemnity scale: *Bell Canada v. Olympia & York Developments Ltd.* (1994), 17 O.R. (3d) 135 (C.A.); *St. Jean (Litigation guardian of) v. Cheung*, [2009] O.J. No. 27 at para. 4 (C.A.).

[13] The court has the discretion to depart from the normal rule that the loser pays costs. Subrule 57.01(4) of the *Rules of Civil Procedure* states:

> 57.01(4) Nothing in this rule or rules 57.02 to 57.07 affects the court under section 131 of the *Courts of Justice Act*,
>
> (a) to award or refuse to costs in respect of a particular issue or part of a proceeding;
>
> (b) to award a percentage of assessed costs or award assessed costs up to or from a particular stage of a proceeding;

TAB 3

COURT OF APPEAL FOR ONTARIO

CITATION: Baker v. Blue Cross Life Insurance Company of Canada, 2023 ONCA 842
DATE: 20231220
DOCKET: COA-22-CV-0046

Hourigan, Zarnett and George JJ.A.

BETWEEN

Sara Baker

Plaintiff (Respondent)

and

Blue Cross Life Insurance Company of Canada

Defendant (Appellant)

Paul J. Pape and Mitchell McGowan, for the appellant

Geoffrey Adair and Stephen Birman, for the respondent

Linda M. Plumpton and J. Toshach Weyman, for the intervener Canadian Life & Health Insurance Association Inc.

Heard: November 15, 2023

On appeal from the judgment of Justice Susan Vella of the Superior Court of Justice, dated August 12, 2022, sitting with a jury, and the order for costs, dated March 22, 2023, with reasons reported at 2023 ONSC 1891.

Hourigan J.A.:

A. OVERVIEW

[1] The respondent, Sara Baker, suffered a stroke while exercising in October 2013. At the time of the incident, she was 38 years old and was the Director of

term disability insurance policies, constitutes special circumstances justifying [an award of full indemnity costs]."

[40] Leave to appeal a costs order will not be granted except in obvious cases where the party seeking leave convinces the court there are "strong grounds upon which the appellate court could find that the judge erred in exercising his discretion": *Brad-Jay Investments Limited v. Village Developments Limited* (2006), 218 O.A.C. 315 (C.A.), at para. 21, leave to appeal refused, [2007] S.C.C.A. No. 92; *More v. 1362279 Ontario Ltd. (Seiko Homes*), 2023 ONCA 527, at para. 32. This test is designed to impose a high threshold because appellate courts recognize that fixing costs is highly discretionary and that trial judges are best positioned to understand the dynamics of a case and to render a costs decision that is just and reflective of what actually happened on the ground: *Algra v. Comrie Estate*, 2023 ONCA 811, at para. 48.

[41] I agree with the submissions of the appellant and the intervener – who was granted status only on the issue of costs – that the trial judge erred in creating a new category of cases where full indemnity costs will automatically follow. While such a category exists for duty to defend cases, it is based on the contractual language of such policies: see e.g., *E.M. v. Reed et al.* (2003), 171 O.A.C. 145 (C.A.), at para. 22.

TAB 4

COURT OF APPEAL FOR ONTARIO

CITATION: Beaumont v. Beaumont, 2025 ONCA 94
DATE: 20250210
DOCKET: COA-23-CV-1256

Hourigan, Wilson and Madsen JJ.A.

BETWEEN

Sylvia Beaumont

Plaintiff/Defendant by Counterclaim (Appellant)

and

Dakota Beaumont and Brodan Beaumont

Defendants/Plaintiffs by Counterclaim/Claimants in Third Party Claim/Defendants by Counterclaim in Third Party action (Respondents)

and

Bart Beaumont*, Sylvia Beaumont*, Boemar Canada Inc., Boemar Inc., Boemar Surfaces Inc., Boemar Products Inc. and Boemar Surface Systems Inc.*

Third Parties/Bart Beaumont and Boemar Surface Systems Inc. being Claimants by Counterclaim (Appellants*)

Jonah Waxman and Carissa DeMarinis, for the appellants Bart Beaumont, Sylvia Beaumont and Boemar Surface Systems Inc.

Louis Century and Amy Chen, for the respondents Dakota Beaumont and Brodan Beaumont

Heard: February 6, 2025

[20] Where an appeal from the main award is dismissed, the appellant needs leave to appeal the costs order pursuant to s. 133(b) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. Leave to appeal a costs order will not be granted except in obvious cases where the party seeking leave convinces the court there are "strong grounds upon which the appellate court could find that the judge erred in exercising his discretion": *Baker*, at para. 40. This test is designed to impose a high threshold because appellate courts recognize that fixing costs is highly discretionary and that trial judges are best positioned to understand the dynamics of a case and to render a costs decision that is just and reflective of what actually happened on the ground: *Baker*, at para. 40. The appellants have not met their onus in this regard.

[21] In any event, we see no basis to interfere with the trial judge's costs award.

Disposition

[22] The appeal is dismissed. The appellants shall pay costs to the respondents in the agreed upon all-inclusive sum of $15,000.

"C.W. Hourigan J.A."
"D.A. Wilson J.A."
"L. Madsen J.A."

TAB 5

Business Development Bank of Canada v. Pine Tree Resorts Inc. et al. [Indexed as: Business Development Bank of Canada v. Pine Tree Resorts Inc.]

Ontario Reports

Court of Appeal for Ontario,

Blair J.A. (in Chambers)

April 29, 2013

115 O.R. (3d) 617 | 2013 ONCA 282

Case Summary

Bankruptcy and insolvency — Practice and procedure — Appeals — Second mortgagee appealing order granting first mortgagee's application for appointment of receiver over mortgagor's assets — Second mortgagee wishing to exercise its rights under s. 22 of Mortgages Act — Leave to appeal required as appeal did not fall within s. 193(a) or s. 193(c) of Bankruptcy and Insolvency Act ("BIA") — Test for leave to appeal under s. 193(e) of BIA being whether proposed appeal raises issue of general importance to practice in bankruptcy/ insolvency matters or to administration of justice generally, is prima facie meritorious and would not unduly hinder progress of bankruptcy/insolvency proceedings — Proposed appeal not satisfying those criteria — Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, s. 193 — Mortgages Act, R.S.O. 1990, c. M.40, s. 22.

BDC held security for the money owed to it by Pine Tree by way of a first mortgage and general security agreements. Romspen was the second mortgagee. Both mortgages were in default. Romspen wished to exercise its rights as a subsequent mortgagee under s. 22 of the *Mortgages Act* to put BDC's mortgage in good standing and take over the sale of the property. It proposed to pay all arrears of principal and interest, together with BDC's costs, expenses and outstanding realty taxes, but did not propose to repay HST arrears, which constituted a default under the BDC security documents. BDC applied successfully for the appointment of a receiver over the Pine Tree's assets. Pine Tree and Romspen sought to appeal that order. Romspen intended to argue that it was entitled to exercise its [page618] rights under s. 22 of the *Mortgages Act* as the arrears of HST did not jeopardize BDC's security because they were a subsequent encumbrance, and therefore it was not necessary for them to comply with that covenant in order to be able to take advantage of a subsequent mortgagee's rights under s. 22.

Held, leave to appeal should be denied.

Leave to appeal under s. 193(*e*) of the *Bankruptcy and Insolvency Act* was required. The appeal did not involve "future rights" within the meaning of s. 193(*a*). Section 193(*c*) did not apply as an order appointing a receiver did not bring into play the value of the property. In determining whether to grant leave to appeal under s. 193(*e*), the court will look to whether the proposed appeal (a) raises an issue that is of general importance to the practice in bankruptcy/insolvency or to the administration of justice as a whole; (b) is *prima facie* meritorious; and (c) would unduly

Arrangement Act, R.S.C. 1985, c. C-36 ("*CCAA*"), although their application has not been confined to those types of cases.

[22] A second approach to the test was adopted by Goodman J.A. in *R.J. Nicol Construction Ltd. (Trustee of) v. Nicol*, [1995] O.J. No. 48, 77 O.A.C. 395 (C.A., in Chambers), at para. 6. Through this lens, the court is to determine whether the decision from which leave to appeal is sought (a) appears to be contrary to law; (b) amounts to an abuse of judicial power; or [page623] (c) involves an obvious error, causing prejudice for which there is no remedy.

[23] Ontario decisions have traditionally leaned toward the *R.J. Nicol* factors when determining whether to grant leave to appeal under s. 193(*e*) of the *BIA*: see, in addition to *R.J. Nicol*, for example, *Leard (Re)*, [1994] O.J. No. 719, 114 D.L.R. (4th) 135 (C.A., in Chambers); and *Century Services Inc.*

[24] This view has evolved in recent years, however, and three decisions in particular have added nuances to the *R.J. Nicol* approach by considering such factors as whether there is an arguable case for appeal and whether the issues sought to be raised are significant to the bankruptcy practice in general and ought to be addressed by this court: see *Fiber Connections Inc.*, at paras. 16-20; *GMAC Commercial Credit Corp. of Canada v. TCT Logistics Inc.*, [2003] O.J. No. 5761 (C.A., in Chambers); and *Baker (Re)*, (1995), 22 O.R. (3d) 376, [1995] O.J. No. 580 (C.A., in Chambers). These factors echo the criteria set out in *Power Consolidated.*

[25] In *Baker (Re)*, Osborne J.A. acknowledged the two alternative approaches to determining whether leave to appeal should be granted. He concluded, at p. 381 O.R., that the *R.J. Nicol* criteria were "generally relevant" but observed that all factors need not be given equal weight in every case. For that particular case, he emphasized the factor that the issue sought to be appealed was "a matter of considerable general importance in bankruptcy practice". In *TCT Logistics*, at para. 9, Feldman J.A. listed all of the *R.J. Nicol* and the *Power Consolidated* criteria -- without apparently distinguishing between them -- as matters to be taken into account. She granted leave holding that the issues in that case were significant to the commercial practice regulating bankruptcy and receivership and ought to be considered by this court.

[26] Finally, in *Fiber Connections Inc.*, Armstrong J.A. reviewed all of the foregoing authorities and, at para. 20, granted leave to appeal because he was satisfied in that case that there were arguable grounds of appeal (although it was not necessary for him to determine whether the appeal would succeed) and because the issues raised were significant to bankruptcy practice and ought to be considered by this court.

[27] I take from this brief review of the jurisprudence that, while judges of this court have tended to favour the *R.J. Nicol* test in the past, there has been a movement towards a more expansive and flexible approach more recently -- one that incorporates the *Power Consolidated* notions of overall importance to [page624] the practice area in question or the administration of justice as well as some consideration of the merits.

[28] That being the case, it is perhaps time to attempt to clarify the "confusion" that arises from the co-existence of the two streams of criteria in the jurisprudence. I would adopt the following approach.

[29] Beginning with the overriding proposition that the exercise of granting leave to appeal under s. 193(*e*) is discretionary and must be exercised in a flexible and contextual way, the

following are the prevailing considerations in my view. The court will look to whether the proposed appeal

(a) raises an issue that is of general importance to the practice in bankruptcy/insolvency matters or to the administration of justice as a whole, and is one that this court should therefore consider and address;

(b) is *prima facie* meritorious, and

(c) would unduly hinder the progress of the bankruptcy/ insolvency proceedings.

[30] It is apparent these considerations bear close resemblance to the *Power Consolidated* factors. One is missing: the question whether the point raised is of significance to the action itself. I would not rule out the application of that consideration altogether. It may be, for example, that in some circumstances the parties will need to have an issue determined on appeal as a step toward dealing with other aspects of the bankruptcy/ insolvency proceeding. However, it seems to me that this particular consideration is likely to be of lesser assistance in the leave to appeal context because most proposed appeals to this court raise issues that are important to the action itself, or at least to one of the parties in the action, and if that consideration were to prevail there would be an appeal in almost every case.

[31] I have not referred specifically to the three *R.J. Nicol* criteria in the factors mentioned above. That is because those factors are caught by the "*prima facie* meritorious" criterion in one way or another. A proposed appeal in which the judgment or order under attack (a) appears to be contrary to law, (b) amounts to an abuse of judicial power or (c) involves an obvious error causing prejudice for which there is no remedy will be a proposed appeal that is *prima facie* meritorious. I recognize that the *Power Consolidated* "*prima facie* meritorious" criterion is different than the "arguable point" notion referred to by Osborne J.A. in *Baker* and by Armstrong J.A. in *Fiber Connections*. In my [page625] view, however, the somewhat higher standard of a *prima facie* meritorious case on appeal is more in keeping with the incorporation of the *R.J. Nicol* factors into the test.

[32] As I have explained above, however, the jurisprudence has evolved to a point where the test for leave to appeal is not simply merit-based. It requires a consideration of all of the factors outlined above.

[33] The *Power Consolidated* criteria are the criteria applied by this court in determining whether leave to appeal should be granted in restructuring cases under the *CCAA*: see *Country Style Food Services (Re)*, [2002] O.J. No. 1377, 158 O.A.C. 30 (C.A., in Chambers), Feldman J.A., at para. 15; and *Blue Range Resources Corp. (Re)*, [1999] A.J. No. 975, 244 A.R. 103 (C.A.). The criteria I propose are quite similar. There is something to be said for having similar tests for leave to appeal in both *CCAA* and *BIA* insolvency proceedings. Proposed appeals in each area often arise from discretionary decisions made by judges attuned to the particular dynamics of the proceeding. Those decisions are entitled to considerable deference. In addition, both types of appeal often involve circumstances where delays inherent in appellate review can have an adverse effect on those proceedings.

Application of the test in the circumstances

TAB 6

COURT OF APPEAL FOR ONTARIO

CITATION: Cameron Stephens Mortgage Capital Ltd. v. 2011836 Ontario Corp., 2026 ONCA 77
DATE: 20260204
DOCKET: M56617 & COA-26-OM-0012

Favreau J.A. (Motion Judge)

BETWEEN

Cameron Stephens Mortgage Capital Ltd.

Applicant (Responding Party)

and

2011836 Ontario Corp.*, Jefferson Properties Limited Partnership*,1000162801 Ontario Corp., American Corporation and 1000199992 Ontario Corp.

Respondents (Responding Parties/Moving Parties by way of cross-motion*)

Fanseay Wang, acting in person purportedly for the responding parties/moving parties by way of cross-motion, 2011836 Ontario Corp. and Jefferson Properties Limited Partnership

Ryan Shah, for the moving party/responding party by way of cross-motion, Albert Gelman Inc., in its capacity as receiver of 2011836 Ontario Corp. and Jefferson Properties Limited Partnership

Wendy Greenspoon, for the responding party, Cameron Stephens Mortgage Capital Ltd.

Heard: January 22, 2026

REASONS FOR DECISION

$400,000 per month, which reduces Cameron's ability to recover the full amount owing with the passage of time.

Disposition

[31] Mr. Wang's motions are dismissed. The Receiver's motion for an order declaring that the orders can only be appealed with leave of the court is granted. The net effect of this disposition is that the Debtors and Mr. Wang are not permitted to proceed with an appeal from the orders, either as of right or with leave, and there is therefore no stay of the orders.

[32] The Receiver is entitled to its costs on a partial indemnity basis in the amount of $13,500 to be paid by Mr. Wang.

"L. Favreau J.A."

TAB 7

CITATION: Canadian Metal Buildings Inc. v. 1467344 Ontario Limited, 2019 ONSC 566
COURT FILE NO.: CV-17-62211-SR
MOTION HEARD: 20181218
REASONS RELEASED: 20190121

SUPERIOR COURT OF JUSTICE – ONTARIO

BETWEEN:

CANADIAN METAL BUILDINGS INC.

Plaintiff

- and-

1467344 ONTARIO LIMITED, OPERATING AS SEC & CO.

Defendant

BEFORE: MASTER M.P. McGRAW

COUNSEL: E. Grigg
Email: E.Grigg@AdvocatesLLP.com
-Counsel for the Defendant

Z. Pringle
Email:zpringle@shlaw.ca
-Counsel for the Plaintiff

REASONS RELEASED: January 21, 2019

Reasons for Endorsement

I. Overview

[1] As set out in my Endorsement dated November 21, 2018 (the "November 21 Endorsement"), the Defendant, 1467344 Ontario Limited, Operating As SEC & Co. ("SEC") brought motions seeking security for costs (the "Security For Costs Motion") and leave to cross-examine the affiant of the Plaintiff's Affidavit of Documents (the "AOD Motion") while the Plaintiff, Canadian Metal Buildings Inc. ("CMB") brought a motion for a discovery plan and timetable (the "Timetable Motion"). The parties resolved the AOD Motion as a result of the Plaintiff's delivery of a Supplementary Affidavit of Documents and additional productions and the Timetable Motion by agreeing to a discovery plan.

[2] With respect to the Security For Costs Motion, as set out in the November 21 Endorsement, the parties did not cite, consider or provide submissions with respect to recent case law from the Ontario Court of Appeal, in particular, *Yaiguaje* v. *Chevron Corp.*, 2017 ONCA

proceed without the posting of ordered security for costs."

[11] In *Baca v. Tatarinov*, 2018 ONSC 1307, I summarized the "established test" referred to in *Novak*. The law on security for costs was also summarized by J.R. Henderson J. in *2311888 Ontario Inc.* v. *Ross*, 2017 ONSC 1295 at para.17 and Master Muir in *2179548 Ontario Inc.* v. *2467925 Ontario Inc.* [2017] O.J. No. 246 at para. 8.

[12] The initial onus is on the defendants to show that the plaintiff falls within one of the four enumerated categories in Rule 56.01. If the defendant meets the initial onus, the plaintiff can rebut the onus and avoid security for costs by showing that they have sufficient assets in Ontario or a reciprocating jurisdiction to satisfy a costs order; the order is unjust or unnecessary; or the plaintiff should be permitted to proceed to trial despite its impecuniosity should it fail (see *Travel Guild Inc.* v. *Smith*, 2014 CarswellOnt 19157 (S.C.J.) at para.16; *Coastline Corp.* v. *Canaccord Capital Corp.*, [2009] O.J. No. 1790 (ONSC) at para. 7; *Cobalt Engineering v. Genivar Inc.*, 2011 ONSC 4929 at para. 16).

[13] Master Glustein (as he then was) set out the applicable principles at paragraph 7 of *Coastline:*

> "7 I apply the following legal principles:
>
> (i) The initial onus is on the defendant to satisfy the court that it "appears" there is good reason to believe that the matter comes within one of the circumstances enumerated in Rule 56.01 (*Hallum v. Canadian Memorial Chiropractic College* (1989), 70 O.R. (2d) 119 (H.C.J.) at 123);
>
> (ii) Once the first part of the test is satisfied, "the onus is on the plaintiff to establish that an order for security would be unjust" (*Uribe v. Sanchez* (2006), 33 C.P.C. (6th) 94 (Ont. S.C.J. - Mast) ("*Uribe*") at para. 4);
>
> (iii) The second stage of the test "is clearly permissive and requires the exercise of discretion which can take into account a multitude of factors". The court exercises a broad discretion in making an order that is just (*Chachula v. Baillie* (2004), 69 O.R. (3d) 175 (S.C.J.) at para. 12; *Uribe*, at para. 4);
>
> (iv) The plaintiff can rebut the onus by either demonstrating that:
>
> (a) the plaintiff has appropriate or sufficient assets in Ontario or in a reciprocating jurisdiction to satisfy any order of costs made in the litigation,
>
> (b) the plaintiff is impecunious and that justice demands that the plaintiff be permitted to continue with the action, *i.e.* an impecunious plaintiff will generally avoid paying security for costs if the plaintiff

TAB 8

COURT FILE NO.: CV-06-079072-00
DATE: 20090624

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Extend-A-Call Inc. v. Dmitri Granovski et al.

BEFORE: The Honourable Mr. Justice C. Boswell

HEARD: June 17, 2009

COUNSEL: Ms. A. Yiu, for the Defendants/Plaintiffs by Counterclaim

Mr. R. Breslin, Agent for the Plaintiffs/Defendants by Counterclaim

E N D O R S E M E N T

BOSWELL J:

Introduction

[1] In this action, the Plaintiff seeks some $2,000,000.00 for breach of contract. Essentially, it is alleged that the Plaintiff had a contractual relationship with the Defendants who were to provide technical support to the Plaintiff's internet domain hosting business. The Plaintiff alleges that the Defendants engaged in a scheme to divert incoming customers from the Plaintiff's business to the Defendants' business.

[2] The action was commenced in March 2006. Initially, the Plaintiff was not represented by counsel. A motion was brought by Richard Breslin in the Summer of 2006 for an Order granting him leave to represent the Plaintiff. The Plaintiff subsequently retained counsel and the motion was abandoned before it was heard.

[3] In March 2007, the Defendants/Plaintiffs by Counterclaim, initiated a motion seeking security for costs. A consent Order was entered into on March 29, 2007 (Justice Jenkins' Order) which required the Plaintiff to post security as follows:

(i) $5,000.00 within 15 days;

(ii) A further $7,500.00 within 15 days of the completion of the examination for discovery of the Defendants;

made appropriate provision for those funds at the time that the Order of Justice Jenkins was made.

(iii) Should security for costs be ordered against the Defendants?

[15] Security for costs are provided for in Rule 56 of the *Rules of Civil Procedure*. Rule 56.01(1) sets out the conditions under which an order for security for costs may be made.

[16] The Plaintiff has not satisfied me on the evidence before the court that any of the conditions set out in Rule 56.01(1) (a) through (f) apply. The case has not been made out justifying an order requiring the Defendants to post security for costs.

(iv) Should Mr. Breslin be granted leave to represent the Plaintiff or should the action be stayed until counsel is appointed?

[17] Rule 15.01(2) provides that a party to a proceeding that is a corporation shall be represented by a lawyer, except with leave of the Court. The Rule is not instructive in terms of how applications for leave are to be determined.

[18] As Quinn J. observed in *Lamond v. Smith* (2004) 11 C.P.C. (6th) 104, the rationale for the rule is not readily apparent. Clearly, individuals are able to, as a right, represent themselves. Corporations, of course, are incapable of representing themselves, but as Quinn J. pointed out in *Lamond v. Smith*, where the corporation is closely held and there is a sole director, officer and shareholder, it is hard to justify not allowing that individual to represent the company in view not only of the right of individuals to represent themselves, but the prevalence of individuals representing themselves in our courts.

[19] There is, however, at least one material difference between individuals and corporations. In particular, there may be numerous other stakeholders with significant interests in the affairs of a corporation including shareholders, officers, directors, employees, and perhaps creditors. The potential for other significant interests to be affected when a corporation becomes involved in litigation is a sufficient rationale for the requirement that corporations be represented by counsel in the absence of leave. Before granting leave, I believe the Court should have regard to the following factors:

(i) Whether the proposed representative has been duly authorized by the corporation to act as its legal representative;

(ii) Whether the proposed representative has a connection to the corporation;

(iii) The structure of the corporation in terms of shareholders, officers and directors and whether it is a closely held corporation;

(iv) Whether the interests of shareholders, officers, directors, employees, creditors and other potential stakeholders are adequately protected by the granting of leave;

(v) Whether the proposed representative is reasonably capable of comprehending the issues in the litigation and advocating on behalf of the corporation. The Court should not impose too high a threshold at this stage, given that the courts abound with self-represented litigants of varying skills. The proposed representative should, however, be reasonably capable of comprehending the issues and articulating the case on behalf of the corporation;

(vi) Whether the corporation is financially capable of retaining counsel. Access to justice has been a concern troubling courts at all levels in Canada for some considerable time. It is fundamental to integrity of the courts and the reputation of the administration of justice that parties have reasonable access to our courts. If the refusal to grant leave would effectively bar a corporation from access to justice, this factor should be given considerable weight; and,

(vii) Any other relevant factor specific to the circumstances of the individual case.

[20] The proposed representative in this case, Mr. Breslin, has the appropriate authorization of the Plaintiff corporation to act as its representative. The Plaintiff is a closely held corporation. Mr. Breslin is intimately connected with it, being its only shareholder and officer. In fact, the evidence on the motion indicates that Mr. Breslin is the only significant stakeholder with an interest in the corporation.

[21] Mr. Breslin is, in my view, capable of understanding and advocating the corporation's interests on the live issues in the proceeding. He has, for a non-lawyer, extensive experience in litigation before the courts in Ontario. While he is not a trained and qualified lawyer, I am satisfied that he does have a sufficient working knowledge of the Rules of Civil Procedure and the issues in this proceeding to effectively advocate for the Plaintiff.

[22] I am also satisfied on the evidence before me that the Plaintiff is financially unable to retain counsel and that the case would be effectively grounded in the event that he was not granted leave to represent the Plaintiff.

[23] The Defendants have evidence that Mr. Breslin has had somewhat of a checkered past, including fraud charges in the United States and being the subject of criticism by judicial officers in Ontario in other civil cases. While there is some merit to the Defendants' position, it is also true that Mr. Breslin has already been authorized to act on behalf of the corporation in two other proceedings. Moreover, the evidence of prior misconduct does not involve misconduct in the capacity of a legal representative. There is no allegation that he has acted inappropriately in attempting to advocate on behalf of the Plaintiff in this case or otherwise.

TAB 9

COURT OF APPEAL FOR ONTARIO

CITATION: GlycoBioSciences Inc. (Glyco) v. MAGNA Pharmaceuticals, Inc. (Magna), 2024 ONCA 760
DATE: 20241015
DOCKET: M55197 (COA-24-CV-0417) & M55199 (COA-24-CV-0270)

Simmons, Coroza and Sossin JJ.A.

DOCKET: M55197 (COA-24-CV-0417)

BETWEEN

GlycoBioSciences Inc. (“Glyco”)

Applicant
(Appellant/Moving Party)

and

MAGNA Pharmaceuticals, Inc. (“Magna”)

Respondent
(Respondent/Responding Party)

DOCKET: M55199 (COA-24-CV-0270)

AND BETWEEN

GlycoBioSciences Inc. (“Glyco”)

Applicant
(Appellant/Moving Party)

and

Industria Farmaceutica Andromaco, SA., de C.V. (“Andromaco”)* and Montebello Packaging (“Montebello”) and Nadro S.A.P.I. de C.V. (“Nadro”)

[10] The motion judge stated, “I am left in some doubt as to the nature of this corporation and its financial affairs.”

[11] While the motion judge decided the Rule 15 motions would be addressed prior to the security for costs motion, it is unclear whether the motion judge reviewed the record underlying the security for costs motion. In these circumstances, Mr. Drizen was permitted to make submissions on the basis of this evidence without first being required to bring a motion to have this evidence admitted as fresh evidence.

ANALYSIS

[12] We now turn to the motion decision itself.

[13] A panel review of a motion judge’s decision under s. 7(5) of the *Courts of Justice Act* is not a *de novo* determination: *Correct Building Corporation v. Lehman*, 2022 ONCA 723, at para. 3; *Machado v. Ontario Hockey Association*, 2019 ONCA 210, at para. 9. Deference is owed to the discretionary decisions of a motion judge. A reviewing panel may only intervene if the motion judge erred in principle or reached an unreasonable result, or if the motion judge’s decision reflects a legal error or a misapprehension of material evidence: *Hillmount Capital Inc. v. Pizale*, 2021 ONCA 364, 462 D.L.R. (4th) 228, at para. 18.

[14] In this case, we see no error of principle, unreasonable result, or legal error. The motion judge properly recognized the discretionary and contextual nature of

r. 15.01(2) and provided a clear justification for his decision to deny leave for Mr. Drizen to represent Glyco in these appeals.

[15] Mr. Drizen argues that the financial information first filed in response to the responding parties' security for costs motion supports his claim that Glyco is impecunious. Mr. Drizen asserts that the motion judge did not consider this evidence, leading him to err in his conclusion that "[t]his is not a case in which access to justice supports the granting of his motion."

[16] The responding parties contend that the motion judge's conclusion on access to justice was justified irrespective of Glyco's financial position, given the context of this litigation, in which Glyco is seeking Ontario courts to assert jurisdiction over claims against foreign corporations that do not conduct business in Ontario.

[17] The motion judge correctly stated in his reasons that Mr. Drizen bore the burden of showing leave was justified, including with respect to Glyco's financial position. Whether or not he referred to the bank records of Glyco in reaching this conclusion is immaterial, as those records do not establish the financial position of Glyco, or address the status of its previous revenues or its current business model. It was open to the motion judge to conclude that access to justice did not support granting the motion.

TAB 10

CITATION: Hagshama Canada 9 Gold Ltd. v. Decade Urban Communities Corp., 2021 ONSC 5150
COURT FILE NO: CV-19-630231
MOTION HEARD: 20210419
REASONS RELEASED: 20210721

SUPERIOR COURT OF JUSTICE – ONTARIO

BETWEEN:

HAGSHAMA CANADA 9 GOLD LTD. and HAGSHAMA CANADA 9 PLATINUM LTD.

Plaintiffs

- and-

DECADE URBAN COMMUNITIES CORP. and MICHAEL SISKIND

Defendants

-and-

GUPM CONSTRUCTION MANAGERS (A DIVISION OF GARY ULIAS & ASSOCIATES INC.)

Third Party

BEFORE: MASTER M.P. McGRAW

COUNSEL: N. Holmberg
for the Defendants
Email: nholmberg@lolg.ca

I.Schein
Email: ischein@mindengross.com

REASONS RELEASED: July 21, 2021

Reasons for Endorsement

I. Introduction

[1] This is a motion by the Defendants seeking security for costs of $731,000 from the Plaintiffs in this action arising from a joint venture. The Plaintiffs have no assets in Ontario, therefore, in determining the justness of the order, the disputed issues are largely limited to the Plaintiffs' assertion that they are impecunious and the merits of their claims.

(*2232117 Ontario Inc.* v. *Somasundaram*, 2020 ONSC 1434 at para. 27). I conclude that security for costs can be ordered without prohibiting the Plaintiffs from proceeding with this action while affording the Defendants reasonable and proportionate protection from an unenforceable costs award. In my view, it is just and appropriate for parties such as the Plaintiffs with no assets and no bank accounts who set up their affairs as they have and make no efforts to raise or borrow funds or provide any financial disclosure beyond their own to provide some reasonable protection to the Defendants from an unenforceable costs award. The fact that this is private commercial litigation with no public interest considerations supports this conclusion. Applying a holistic approach, considering all of the relevant factors and balancing the parties' interests, I conclude that it is just in the circumstances that security for costs be ordered.

[34] Determining the order which is just in the circumstances and striking the appropriate balance extends to the quantum of security. In *Rosin*, H.J. Pierce J. held as follows:

> "38 Citizens are entitled to access to the courts for the purpose of determining disputes. Society's interest is in having disputes determined on their merits. The purpose of security for costs is to protect a defendant from the prospect of an unenforceable judgment for costs; that is a risk in this case if the plaintiff is unsuccessful. However, the amount of security to be posted should not be so onerous as to effectively block access to the courts.
>
> 39 While I am persuaded that security for costs is warranted in this case, I am concerned that the amounts claimed by the defendants, both individually and collectively, may have the effect of blocking the plaintiff's access to the court…." (*Rosin* at paras. 38-39)

[35] The court has broad discretion to determine a fair and reasonable amount of security which is substantially similar to the exercise of its discretion in fixing costs of a proceeding pursuant to Rule 57.01 (*Canadian Metal Buildings Inc.* v. *1467344 Ontario Limited*, 2019 ONSC 566 at para. 27). The quantum should reflect a number that falls within the reasonable contemplation of the parties, what the successful defendant would likely recover and the factors set out in Rule 57.01 (*720441 Ontario Inc.* v. *The Boiler et al*, 2015 ONSC 4841 at para. 56; *Marketsure Intermediaries Inc.* v. *Allianz Insurance Co. of Canada*, 2003 CarswellOnt 1906 at paras. 17-20). In most cases, security for costs will be ordered on a partial indemnity scale (*Marketsure* at paras. 13-18). When an action is in its early stages, like the present one, an instalment or "pay as you go" order is usually the most appropriate (*Coastline* at para. 7).

[36] The Defendants' request $710,000 on a substantial indemnity scale in the following instalments: $130,000 within 30 days of the granting of security for costs; $130,000 within 30 days of the completion of examinations for discovery; $61,000 within 30 days of the completion of mediation; and $410,000 no later than 90 days before trial. The Plaintiffs argue that the Defendants' amount is grossly exaggerated and that $252,379 on a substantial indemnity scale and approximately $200,000 on a partial indemnity scale are more accurate and reasonable.

[37] In my view, the significant amount sought by the Defendants is not fair, reasonable, within the reasonable expectations of the parties or proportionate. The Defendants have not

TAB 11

COURT OF APPEAL FOR ONTARIO

CITATION: Health Genetic Center Corp. (Health Genetic Center) v. New Scientist Magazine, 2019 ONCA 576
DATE: 20190705
DOCKET: M50445 (C66385)

Brown J.A. (Motions Judge)

BETWEEN

Health Genetic Center Corp. o/a Health Genetic Center
and Yuri Melekhovets

Plaintiffs
(Appellants/Responding Parties)

and

New Scientist Magazine, Peter Aldhous and Reed Business Information Ltd.

Defendants
(Respondents/Moving Parties)

Sandra Barton, for the moving parties/respondents

Karen Zvulony, for the responding parties/appellants

Heard: June 25, 2019

REASONS FOR DECISION

I. OVERVIEW

[1] The appellants, Health Genetic Center Corp. o/a Health Genetic Center and Yuri Melekhovets, brought a defamation action against the respondents,

> defendants on the available assets of the plaintiffs, access to justice concerns, and the public importance of the litigation. See: *Hallum v. Canadian Memorial Chiropractic College* (1989), 70 O.R. (2d) 119 (H.C.); *Morton v. Canada (Attorney General)* (2005), 75 O.R. (3d) 63 (S.C.); *Cigar500.com Inc. v. Ashton Distributors Inc.* (2009), 99 O.R. (3d) 55 (S.C.); *Wang v. Li*, 2011 ONSC 4477 (CanLII) (S.C.); and *Brown v. Hudson's Bay Co.,*2014 ONSC 1065, 318 O.A.C. 12 (Div. Ct.).
>
> While this case law is of some assistance, each case must be considered on its own facts. It is neither helpful nor just to compose a static list of factors to be used in all cases in determining the justness of a security for costs order. There is no utility in imposing rigid criteria on top of the criteria already provided for in the Rules. The correct approach is for the court to consider the justness of the order holistically, examining all the circumstances of the case and guided by the overriding interests of justice to determine whether it is just that the order be made.

Good reason to believe the appeal is frivolous and vexatious

[9] In ascertaining whether "there is good reason to believe that the appeal is frivolous and vexatious", the court need not reach a definitive conclusion. Rather, the language "suggests a tentative conclusion of absence of merit": *York University v. Markicevic*, 2017 ONCA 651, at para. 24.

[10] The case law indicates that in order to satisfy the "frivolous and vexatious" element of r. 61.06(1)(a), the moving party must demonstrate two matters. First, the moving party must show that there is "good reason" to believe that the appeal appears to be devoid of merit: *Schmidt*, at p. 5. In this regard, the cases emphasize that the moving party need not go so far as demonstrating that the

appeal is, in fact, devoid of merit, only that there is good reason to believe that it appears to be devoid of merit. A fine distinction, perhaps, but one repeated in the jurisprudence.

[11] Second, the moving party must demonstrate that there is something that supports the conclusion that the appeal is "vexatious" in the sense that it is taken to annoy or embarrass the respondent or has been conducted in a vexatious manner: *Chinese Publications for Canadian Libraries Ltd. v. Markham (City)*, 2017 ONCA 968, at para. 9. The *Schmidt* case talks in terms of the presence or absence of an oblique motive for the launching of the appeal: at p. 6.

Application of the principles

[12] On the record before me, I have no hesitation in concluding that the appeal is not vexatious. The appellants engaged the process of the court to seek a remedy for what they considered to be untruthful and damaging statements about their reputation. They lost at trial. Nevertheless, they enjoy a statutory right of appeal. They are availing themselves of it. Mr. Melekhovets deposed that the driving factor for bringing the appeal is "to vindicate my reputation and the reputation of HGC." That is not an improper purpose or oblique purpose. The appellants have pursued their appeal in an appropriate litigation manner and have perfected it. I see nothing that suggests the appellants have appealed in

TAB 12

CITATION: Hoe v. Ren et al., 2021 ONSC 3100
COURT FILE NO.: CV-19-628651
DATE: 20210427

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Hui Huang Hoe

AND:

Dazhi Ren, Xinyi (Wendy) Tian, and Bitao Yan

BEFORE: J.T. Akbarali J.

COUNSEL: *Alina Sklar*, for the Plaintiff/Appellant

Paul Starkman and Calvin Zhang, for the Defendants/Respondents

HEARD: April 26, 2021

ENDORSEMENT

Overview of the Appeal

[1] The plaintiff/appellant appeals from the decision of Master Josefo, dated January 20, 2021, in which he ordered the plaintiff to post $20,000 in security for costs. The plaintiff argues that the Master made errors of law and palpable and overriding errors of fact in concluding that the plaintiff was not ordinarily resident in Ontario, and in finding that an order for security for costs was just.

[2] Although the Notice of Appeal advances a number of grounds, these can be distilled to the following:

a. The Master made palpable and overriding errors of fact by misapprehending the evidence to conclude that the plaintiff is not ordinarily resident in Ontario. In particular, the Master failed to properly consider the plaintiff's permanent residency status in Canada;

b. The Master erred in law by failing to consider the merits of the plaintiff's action when determining that it was just that an order for security for costs be granted.

[3] There is no dispute that questions of law are reviewed on a correctness standard, while determinations of fact are entitled to deference, and will only be set aside if they amount to palpable and overriding error (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at paras. 8 and 10).

in the record to support the plaintiff's assertion that the plaintiff could not have been operating the business or earning income notwithstanding the pandemic.

[11] It also appears that the plaintiff reported earning $22,000 from the Ontario company on his tax returns, and claimed and received CERB payments as a result, when the $22,000 was in fact money given to him by his family in Malaysia, and the CERB was claimed while he was physically in Malaysia. The Master found that, in exercising his discretion, he was entitled to consider this conduct of the plaintiff in evaluating the defendants' concern whether there would be sufficient assets available or exigible in Ontario to pay their costs if they are successful in the litigation.

[12] The Master also noted that the Ontario company's registered address is the address of Ryerson University's Zone Learning Program, in which the plaintiff was registered. The Master described the program as a business "incubator" open to most anyone to register, to help mentor, foster, and assist start-ups. He noted that the plaintiff's involvement in the Zone Learning Program (which is proceeding online only due to the pandemic) is scheduled to end later this year. The Master found that the fact that Ryerson's address is used for the plaintiff's company does not imply stability, or assets in the company. The Master concluded that the plaintiff owns no property or assets in Ontario, but receives financial support from his family abroad.

[13] The Master concluded that the plaintiff was likely in Ontario for purposes of the security for costs motion. The Master also found that the plaintiff is likely obliged to return to Malaysia to meet his obligation under a government scholarship program from which he benefited. The plaintiff argues the Master incorrectly interpreted the requirements of the scholarship program. In my view, the evidence does not support a conclusion that the Master made a palpable error in this regard, and even if it did, any such error would not be overriding in view of the multitude of factors he considered.

[14] Although the plaintiff makes arguments regarding sufficiency of reasons in his factum, his counsel advised at the hearing that he was not alleging that the Master's reasons were insufficient. Rather, he argues that by failing to weigh the plaintiff's permanent residency status against the other evidence he considered, the Master erred.

[15] In my view, there was ample evidence in the record to allow the Master to conclude that the plaintiff was not ordinarily resident in Ontario. The plaintiff's permanent residency status was not ignored by the Master. He made specific reference to it in his reasons and was clearly aware of it. However, the Master concluded, in reliance on the evidence I reviewed above, that the plaintiff was not ordinarily resident in Ontario. This factual conclusion was open to him on the record. He made no palpable and overriding error in so finding.

Did the Master err in law in finding that an order for security for costs was just?

[16] The plaintiff argues that, after properly directing himself to the law with respect to security for costs, the Master failed to apply it to the facts of the case. Specifically, he argues that the Master referred to the Court of Appeal's decision in *Yaiquaje et al. v. Chevron*, 2017 ONCA 827, in which the court set out factors that have been identified as relevant to an assessment of the justness of an

TAB 13

CITATION: Kaiman v. Graham, 2009 ONCA 77
DATE: 20090128
DOCKET: C47530

COURT OF APPEAL FOR ONTARIO

Weiler, Juriansz and MacFarland JJ.A.

BETWEEN

Cyril Kaiman, Personally and as Litigation Guardian for Benyemina Kaiman, an infant, and as Executor and Trustee of the Estate of Diane Elizabeth (Diamond) Kaiman, deceased

Plaintiffs (Appellants)

and

Douglas Harvey Graham, Personally, and Brenda Louise Graham and Ronald Johnston Swain, Executor and Trustees of the Estate of Harvey Leonard (Alexander) Graham

Defendants (Respondents)

Garry J. Wise, for the appellants

J. William Evans, for the respondent Douglas Harvey Graham

M. John Ewart and P. Kourtney O'Dwyer, for the respondents Brenda Louise Graham and Ronald Johnston Swain

Heard: December 9, 2008

On appeal from the judgment of Justice Robert D. Reilly of the Superior Court of Justice dated July 6, 2007 and reported at 58 R.P.R. (4th) 305.

performance of a lease, a declaration that an unsigned lease was valid, and damages – had nothing to do with the *RTA*. Having regard to the fact that the appellants' arguments at trial did not succeed and that they did not challenge them on appeal, it is clear that there was "no error at trial in this case" and that the appellants are seeking "an opportunity to present a whole new case" based on a statute that was neither pleaded nor argued before the Superior Court. To allow them to raise the *RTA* in these circumstances would run "contrary to the basic purpose of an appeal which is to correct trial error": *Canadiana Towers Ltd. v. Fawcett* (1978), 21 O.R. (2d) 545 (C.A.), at p. 548.

[21] Second, the issue of whether the *RTA* applies to the cottage property appears to involve an application of facts to a legal definition and is thus a question of mixed fact and law.[1] Since the *RTA* was neither raised nor contemplated at trial, the factual record regarding the nature and use of the property is sparse. All that is known is that it was a cottage and that the Kaiman family used it during the summers over the duration of the lease period and sometimes over Christmas for a couple of weeks. Had the respondents known that the *RTA* would have been in issue, they could have developed a more fulsome record on these matters so as to support their contention that the *RTA* does not apply.

[22] Third, no explanation has been put forward as to why this argument was not raised at trial. Counsel on this appeal, who did not represent the appellants at trial, does not allege negligence or incompetence on the part of trial counsel. Nor is there any affidavit from trial counsel to the effect that the *RTA* was not pleaded or raised due to inadvertence. We are simply asked to speculate that this is in fact what happened. The appellants should not be allowed to have a second chance based on speculation.

[23] Fourth, in seeking to be allowed to raise this issue, the appellants did not undertake to save harmless the respondents from their costs at trial on a full indemnity basis or offer to pay the costs of the appeal on this basis. The fact that the appellants did not ensure that the respondents would be adequately compensated in costs for their failure to raise the *RTA* at trial is a factor that has been held to weigh against allowing new arguments on appeal: see e.g. *V.S. v. Nova Scotia (Minister of Health)* (2006), 249 N.S.R. (2d) 185 (C.A.), at para. 28.

[24] Fifth, even if this court were to refer the question of whether the cottage property was subject to the *RTA* to the Landlord and Tenant Board, the likelihood of success of the appellants' argument is by no means clear and is outweighed by the interests of finality. The approach in *Putnam* appears to depart from previous approaches taken by the Divisional Court to the interpretation of s. 5(a) of the *RTA* and its predecessor, s. 3(a) of

[1] While the Divisional Court held in *Putnam* that the interpretation of the exemption to the *RTA* for seasonal and temporary accommodation raised a question of law in the circumstances of that case, the court noted that the factual record was accepted by all parties and was not controversial. The same cannot be said in this case.

the *Tenant Protection Act, 1997*, S.O. 1997, c. 24. In *McCormick v. Paul Bunyan Trailer Camp Ltd*. (1999), 22 R.P.R. (4th) 305 (Div. Ct.), Aitken J. held that all that was necessary for the exemption to apply was that: (1) the living accommodation falls within one of the categories set out in the definition; and (2) it is intended to be occupied for a seasonal or temporary period. It is arguable that this could be said of the cottage at issue in this case. It would be unfair to the respondents to allow the appellants to rely on the *RTA* on appeal in light of the state of the authorities and this sparse factual record. It would also be unfair to the respondents to have them undergo the expense of yet another hearing at first instance simply because a fresh lawyer on the case thought of a new argument that may or may not succeed.

CONCLUSION

[25] Having regard to the positions advanced in the pleadings and at trial, the issue being one of mixed fact and law, the lack of any explanation as to why the argument was not raised at trial, the lack of any undertaking by the appellants' with respect to costs on a full indemnity basis, the likelihood of success of the new argument and the interests of finality, it would be contrary to the interests of justice to allow the appellants to raise the new argument concerning the *RTA* at this late stage.

[26] For these reasons, I would dismiss the appeal. Costs of the appeal are to the respondents and, as agreed, are fixed at $2,500, all inclusive, to each respondent.

RELEASED: RGJ
January 28, 2009

"Karen M. Weiler J.A."
"I agree R.G. Juriansz J.A."
"I agree J. MacFarland J.A."

TAB 14

CITATION: MEIKLE v. AREZ COUTURE INC. et al, 2022 ONSC 4306
COURT FILE NO.: CV-20-00648451-0000
MOTION HEARD: 20220705

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: MARY-THERESA MEIKLE, Plaintiff

AND:

AREZ COUTURE INC. et al, Defendants

BEFORE: Associate Justice R. Frank

COUNSEL: Franciska Veress appearing in person and as a director of Arez Couture Inc.

Ellen V. Swan for the plaintiff/responding party

HEARD: July 5, 2022

REASONS FOR DECISION

A. INTRODUCTION AND BACKGROUND FACTS

[1] This is a motion by the defendant Franciska Veress ("Ms. Veress") for leave to represent the corporate defendant, Arez Couture Inc. ("Arez").

[2] In this action, which was commenced under the Simplified Procedure, the plaintiff/responding party, Mary-Theresa Meikle, seeks repayment of a loan, or alternatively damages for breach of contract with respect to monies loaned to Arez and guaranteed in part by Ms. Veress.

[3] Ms. Veress and Arez have counterclaimed against the plaintiff, alleging breaches of a February 2018 Unanimous Shareholder Agreement among Ms. Veress, the plaintiff and Arez (the "USA").

[4] It is not contested that the plaintiff and Ms. Veress are the sole shareholders and directors of Arez. There is evidence of attempts by Ms. Veress to have the plaintiff removed as a director of Arez, which the plaintiff has objected to on the basis that, in her view, she is entitled to remain a director pursuant to the terms of the USA.

[5] Ms. Veress's evidence is that Arez does not have sufficient funds to retain counsel and that she is not in a financial position to fund such legal representation. In support of this, Ms. Veress has filed financial information about Arez for the years ending September 20, 2018, 2019 and 2020, as well as information about the balance of the funds held in Arez's bank account as of February 16, 2021 ($2,392.69) and June 11, 2022 (overdrawn by $10.30).

[6] Ms. Veress's evidence is that she has had to take on employment with another company in order to pay Arez's bills as well as her own expenses, and that she has obtained *pro bono* legal advice for Arez and herself due to insufficient funds to retain legal counsel.

[7] For the reasons and subject to the conditions outlined below, Ms. Veress's motion for leave to represent Arez is granted.

B. DISCUSSION AND ANALYSIS

[8] The issue to be determined on this motion is whether Ms. Veress should be granted leave under Rule 15.01(2) to represent Arez in this action.

[9] The parties agree that the applicable test with respect to whether to grant leave to an individual to represent a corporation is summarized in *Extend-A-Call Inc. v. Granovski*.[1] In that case, Boswell J. explained the applicable test as follows:

> 17 Rule 15.01(2) provides that a party to a proceeding that is a corporation shall be represented by a lawyer, except with leave of the Court. The Rule is not instructive in terms of how applications for leave are to be determined.
>
> 18 As Quinn J. observed in *Lamond v. Smith*, 11 C.P.C. (6th) 104 (Ont. S.C.J.), the rationale for the rule is not readily apparent. Clearly, individuals are able to, as a right, represent themselves. Corporations, of course, are incapable of representing themselves, but as Quinn J. pointed out in *Lamond v. Smith*, where the corporation is closely held and there is a sole director, officer and shareholder, it is hard to justify not allowing that individual to represent the company in view not only of the right of individuals to represent themselves, but the prevalence of individuals representing themselves in our courts.
>
> 19 There is, however, at least one material difference between individuals and corporations. In particular, there may be numerous other stakeholders with significant interests in the affairs of a corporation including shareholders, officers, directors, employees, and perhaps creditors. The potential for other significant interests to be affected when a corporation becomes involved in litigation is a sufficient rationale for the requirement that corporations be represented by counsel in the absence of leave. Before granting leave, I believe the Court should have regard to the following factors:
>
> > (i) Whether the proposed representative has been duly authorized by the corporation to act as its legal representative;
> >
> > (ii) Whether the proposed representative has a connection to the corporation;

[1] *Extend-A-Call Inc. v. Granovski*, 2009 CarswellOnt 3754, [2009] O.J. No. 2711, 178 A.C.W.S. (3d) 734 ("*Extend-A-Call")*

> (iii) The structure of the corporation in terms of shareholders, officers and directors and whether it is a closely held corporation;
>
> (iv) Whether the interests of shareholders, officers, directors, employees, creditors and other potential stakeholders are adequately protected by the granting of leave;
>
> (v) Whether the proposed representative is reasonably capable of comprehending the issues in the litigation and advocating on behalf of the corporation. The Court should not impose too high a threshold at this stage, given that the courts abound with self-represented litigants of varying skills. The proposed representative should, however, be reasonably capable of comprehending the issues and articulating the case on behalf of the corporation;
>
> (vi) Whether the corporation is financially capable of retaining counsel. Access to justice has been a concern troubling courts at all levels in Canada for some considerable time. It is fundamental to [the] integrity of the courts and the reputation of the administration of justice that parties have reasonable access to our courts. If the refusal to grant leave would effectively bar a corporation from access to justice, this factor should be given considerable weight; and,
>
> (vii) Any other relevant factor specific to the circumstances of the individual case.[2]

[10] The plaintiff acknowledges that Ms. Veress has a close connection to Arez and that Arez is a closely held corporation. However, the plaintiff opposes this motion on the grounds that:

1. Ms. Veress is not the sole shareholder or stakeholder in Arez;
2. Ms. Veress is not the sole director of Arez and has not been authorized by the Board of Directors of Arez to represent Arez in this action;
3. Ms. Veress is not capable of representing Arez nor of understanding the legal issues involved in the action; and
4. Ms. Veress has a conflict of interest and cannot appropriately represent Arez in this action.

[11] The plaintiff also questioned whether the evidence filed in support of the motion is sufficient to demonstrate that Arez is not financially capable of retaining counsel. Specifically, the plaintiff submitted that the evidence is limited to snapshots of bank accounts and out-of-date financial information that does not meet the burden of showing that the corporation cannot afford to retain counsel. In my view, while the evidence regarding financial ability is not overwhelming, I am satisfied that it is sufficient to meet the onus of demonstrating a lack of financial resources. Although no cross-examination was available to the plaintiff because this action was commenced under the Simplified Procedure, there is uncontradicted evidence that the plaintiff has access to the

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[2] *Extend-A-Call* at paras 17-19

TAB 15

CITATION: Moore v. College of Chiropractors, 2025 ONSC 6190
DIVISIONAL COURT FILE NO.: 338/24
DATE: 20251105

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

D.L. Corbett, K. Coats, S. Nakatsuru, JJ.

BETWEEN:	)	
BRIAN MOORE	)	*Antoine D'Ailley,* Counsel for the Appellant
Appellant	)	
- and -	)	
COLLEGE OF CHIROPRACTORS OF ONTARIO	)	*Megan Shortreed, Karen Jones,* Counsel for The Respondent
Respondent	)	**HEARD at Toronto:** June 11, 2025

REASONS FOR DECISION

S. Nakatsuru J.

[1] Dr. Brian Moore appeals from the decision rendered by a panel of the Discipline Committee of the College of Chiropractors of Ontario (the "College") on November 8, 2023, finding Dr. Moore guilty of 11 acts of professional misconduct pursuant to s. 51(1)(c) of the *Health Professions Procedural Code of the Chiropractic Act,* 1991, S.O. 1991, c. 21. The appellant contests each of the 11 findings as well as the Panel's penalty and costs decisions, which ordered, among other things, a fifteen-month suspension and costs to the College in the amount of $690,376.24.

[2] For the following reasons I would allow the appeal on costs but would otherwise dismiss the appeal.

A. FACTUAL BACKGROUND

[3] The appellant is a chiropractor and sole practitioner at his clinic in Aurora, Ontario. He provides conventional chiropractic treatment and a form of mechanical traction known as "decompression therapy".

[4] The complainant, Patient A, and her husband attended the appellant's clinic on August 26, 2019,

dispute. The appellant conceded that this document contained confidential information about Patient A. However, he submits first that Chase was the respective agent of the appellant. Secondly, that the appellant's response to Chase is expressly permitted by s. 6 and s. 37 of *Personal Health Information Protection Act, 2004*, S.O. 2004, c. 3, Sched. A ("*PHIPA"*), which allows personal health custodians to provide personal health information to their agents. It is argued that the failure of the Panel to consider this argument is a palpable and overriding error.

[90] The Panel found that the appellant's response to Chase constituted a breach of the College's Standard of Practice S-002, Record Keeping ("Record Keeping Standard"). However, the appellant submits the College acknowledges that in the event of any inconsistency between the Record Keeping Standard and legislation that affects chiropractic practice, the legislation governs. The appellant submits that this was not considered by the Panel leading to a reversible error on this allegation.

[91] The respondent objects and argues that this ground of appeal, raised for the first time on appeal, should not be entertained.

[92] Parties are expected to raise all of their issues at first instance, and it offends the principle of finality to permit parties to raise issues serially on appeal: *Kaiman v. Graham*, 2009 ONCA 77, 245 O.A.C. 130, at paras. 18-20; *DeGroot v. Licence Appeal Tribunal*, 2022 ONSC 6160 (Div. Ct.), at para. 27; *Bloor West Physiotherapy v. Charytoniuk*, 2017 ONSC 7087 (Div. Ct.), at para. 5. Although the court can, in an appropriate case, permit a party to raise an issue for the first time on appeal, this is a power that should be used sparingly. The court must have regard to factors such as: i) the positions advanced at trial; ii) the explanation as to why the issue was not raised at trial; iii) the sufficiency of the record; iv) the likelihood of success of the new argument; and v) the interests of finality: *Kaiman*, at paras. 20-24.

[93] My consideration of these factors leads me to the conclusion that the appellant should not be permitted to raise this argument for the first time on appeal.

[94] First, at his hearing the appellant asserted both in his testimony and in submissions that he was legally allowed to provide this information to Chase because Chase was the agent of Patient A and her husband, and s. 37(1)(i) of *PHIPA* allowed him to provide confidential information to Patient A's agent for the purpose of verifying claims for payment. On appeal, he fundamentally reverses the agency relationship and for the first time, claims that Chase was actually *his* agent and that the Panel erred because it didn't find: a) Chase was the appellant's agent; and b) the appellant was entitled, pursuant to s. 37 of *PHIPA*, to provide Patient A's personal health information to Chase.

[95] Second, the Panel found as a fact that Chase was not Patient A's or her husband's agent. It concluded that nothing before the Panel indicated such an agency relationship existed. Put another way, this was the factual matrix that the Panel had before it to decide this issue given how the case was litigated.

[96] Third, raising the issue that Chase was the appellant's agent for the first time on appeal means that the opportunity to introduce and test evidence on the issue of that agency was denied to the respondent. Thus, there is prejudice. Moreover, the Panel did not have the opportunity to consider and decide whether the agency relationship was established.

[97] Fourth, the Panel's reasons show that if the argument had been raised below, this could have made a difference in how it approached the issue. The Panel held that the appellant's reliance on s. 37 of

TAB 16

COURT OF APPEAL FOR ONTARIO

CITATION: Novak v. St. Demetrius (Ukrainian Catholic) Development Corporation, 2018 ONCA 219
DATE: 20180305
DOCKET: M48583 (C64044)

Juriansz, Miller and Nordheimer JJ.A.

BETWEEN

Svitlana Novak

Plaintiff/Appellant (Moving Party)

and

St. Demetrius (Ukrainian Catholic) Development Corporation and Ukrainian Canadian Care Centre

Defendants/Respondents (Responding Parties)

Svitlana Novak, acting in person

Nicola Brankley, for the responding parties

Heard: March 1, 2018

REASONS FOR DECISION

[1] The appellant brings this motion to review the decision of Epstein J.A. sitting as a single judge in motions court ordering her to post security of costs of the appeal in the amount of $20,000. At the conclusion of the hearing, we dismissed the motion with reasons to follow. These are our reasons.

[6] Justice Epstein's reasons for finding the appeal vexatious are well supported by the appellant's communications that Epstein J.A. quoted in her reasons.

[7] Justice Epstein's order was made prior to the release of this court's decision in *Chevron Corp. v. Yaiguaje,* 138 O.R. (3d) 1, 2017 ONCA 827, which was included in the appellant's materials. We do not read that decision as altering the established test for ordering security for costs. The established test requires a judge, after analysing the specific factors spelled out in the rules, to consider the overall justness of the order sought. In *Yaiguaje v. Chevron Corp*. the court found that the motion judge had erred in principle in her consideration of the justness of the order.

[8] In this case, we are satisfied the Epstein J.A. did not err in considering the ordering of security for costs to be just. Unlike in *Yaiguaje v. Chevron Corp*, the appellant in this case has a direct economic interest in the appeal. The respondent is not a global enterprise but a not-for-profit senior citizens care centre operated by a church. Unrecoverable costs will reduce the respondent's resources it can dedicate to the care of its clients. There is no indication the respondent sought security for costs as a litigation tactic to end the appeal. The appeal raises no overarching, important, or novel issue. There is no apparent overriding public interest in allowing the appeal to proceed without the posting of ordered security for costs.

TAB 17

COURT OF APPEAL FOR ONTARIO

CITATION: Rathod v. Chijindu, 2024 ONCA 625
DATE: 20240819
DOCKET: M55276 & M55279 (COA-24-CV-0272)

Fairburn A.C.J.O. (Motions Judge)

BETWEEN

Harsha Rathod

Plaintiff/Moving Party (Respondent/Moving Party)

and

Christian Chukwuedozie Chijindu*, Nkiruka Chijindu also known as Nkiruka Ochei, Joy Chijindu*, Ijeoma Chijindu*, The Chijindu Law Firm, Autopoietic Telemetric Solutions Ltd., RVL Masonry Ltd., 2153801 Ontario Ltd. cob as The Leon Group, Meridian Credit Union Limited, YDB Investments Corp., Bluekat Capital Corp.**, Great Northern Insulation Contracting Ltd., Obuba Law Firm and Peter Obuba Kalu

Defendants/Responding Parties (Appellants*/Responding Parties*/ Respondent**/Moving Party**)

Amandeep Sidhu, for the moving party, Harsha Rathod

Brian Belmont, for the moving party, Bluekat Capital Corp.

Christian Chijindu, acting in person

Nkiruka Chijindu, also known as Nkiruka Ochei and Joy Chijindu, acting in person

Ijeoma Chijindu, acting in person

Heard: August 13, 2024

ENDORSEMENT

presumption is that if an order is silent on the time within which it is to be paid, it is payable within 30 days. The order speaks from the moment it is made and the costs must be paid.

[17] The responding parties seem to suggest that they do not have to pay the costs orders made by this court several months ago now. They are wrong. Although they suggest that they have no money to pay those orders, there is no reliable evidence to support this suggestion. Further, as already noted, the same suggestion was made before Roberts J.A. on the security for costs motion and yet the security was paid into court at the very last moment.

[18] I have no hesitation in saying that the responding parties must now pay the outstanding costs orders, which are overdue — payments which must be made and orders complied with before they have another audience in this court for purposes of their appeal.

[19] By making such an order, I am not amending Roberts J.A.'s order, I am simply ordering that the responding parties comply with her outstanding costs orders before their appeal is heard.

[20] Accordingly, the responding parties will pay the outstanding costs orders no later than August 28, 2024, failing which the moving parties may bring a motion before a panel of this court to have the appeal dismissed.

TAB 18

CITATION: Wang, Fengxi (Re), 2025 ONSC 6707
COURT FILE NO.: BK-24-00208725-OT31
DATE: 20251201

SUPERIOR COURT OF JUSTICE – ONTARIO (COMMERCIAL LIST)

RE: IN THE MATTER OF THE BANKRUPTCY OF FANSEAY WANG a.k.a FENGXI WANG OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

BEFORE: KIMMEL J.

COUNSEL: *Wendy Greenspoon-Soer*, for the Applicant/Creditor, Cameron Stephens Mortgage Capital Ltd.

Fanseay Wang a.k.a. Fengxi Wang, Self-Represented

HEARD: October 21, 2025 and November 10, 2025

ENDORSEMENT
(CONTESTED BANKRUTPCY APPLICATION)

The Application

[1] Cameron Stephens Mortgage Capital Ltd. ("Cameron Stephens") seeks a Bankruptcy Order against Fanseay Wang a.k.a Fengxi Wang ("Wang"). The Application was supported by an Affidavit of Truth sworn by Jerrold Marriott on October 3, 2024.

[2] The bankruptcy application was contested by Wang. He submitted a responding affidavit sworn October 15, 2025. While it was served late, the aspects of it that contained facts (as opposed to argument), as supplemented by Wang's oral testimony at the hearing, formed part of the evidentiary record.

[3] Both Mr. Marriott and Mr. Wang testified in chief and were cross-examined at the hearing, which lasted for two days. There was a break in between because the original hearing had been scheduled for only one day but could not be completed in a day.

Background

[4] Wang signed a personal guarantee on March 8, 2022 in favour of Cameron Stephens (the "CS Guarantee"). The CS Guarantee secured the indebtedness of Jefferson Properties Limited Partnership and 2011836 Ontario Corp. (the "Jefferson Debtors") to Cameron Stephens in respect of a 96 unit condominium and townhouse development project (the "Jefferson Project"). Wang was the principal of the Jefferson Debtors.

b. Duca Financial Services Credit Union ("Duca") has a guarantee from Wang ("Duca Guarantee") against loans made by Duca to corporations controlled by Wang in respect of other properties that are not part of the Jefferson Project. Duca made demand upon Wang pursuant to the Duca Guarantee in March of 2024 claiming approximately $7.2 million. Duca later commenced an action for judgment on the Duca Guarantee (Court File No. CV-25-00742064-0000, the "Duca Guarantee Claim").

[12] The amounts that these other creditors have demanded be paid by Wang all remain unpaid.

[13] While he was working on the Jefferson Project, Wang maintained a residence in a condominium located at 980 Yonge Street, #1001, in Toronto, which is the address that appears on his Ontario Driver's Licence. The Condo was sold by a secured creditor and the net proceeds applied to reduce some of the secured debt associated with that property. Wang says that he now resides in China, although he has in the past spent, and continues to spend, time in Boston.

Grounds of Wang's Opposition to the Bankruptcy Order

[14] Wang argues that the Jefferson Project Receivership was, according to what he was told by Cameron Stephens at the time, supposed to enable the quick completion of the Jefferson Project using the consultants, project manager, timeline, trades and funding sources already in place. He points to the December 21, 2023 endorsement of Cavanagh J. when the Receiver was appointed as support for his understanding at the time that the Receiver was appointed to bring stability and financing to enable the construction manager to complete the Jefferson Project, when faced at the time with the prospect trades leaving, construction liens, and the potential loss of the construction manager at a time when there was a need to protect the Project from the elements with the winter months approaching: *Cameron Stephens Mortgage Capital Ltd. v. 2011836 Ontario Corp., Jefferson Properties Limited, et al.* (21 December 2023), Toronto, CV-23-00710795-00CL (Ont. S.C.), at para. 20.

[15] Instead, according to Wang, shortly after the Receiver was appointed, the existing arrangements with trades and the construction manager were cancelled by the Receiver, leading to lengthy construction delays and increased additional costs to complete the Jefferson Project of $30-40 million (Wang estimates $37 million for cancelled agreements of purchase and sale with end purchasers, increased carrying costs, fees and penalties, budget overruns and structural remediation). Wang also contends that the sale price of units in the Jefferson Project's dropped in value dropped many millions of dollars because of the construction delays that delayed getting the built units into market, which has resulted in the sales of these condominium units into the now depressed and oversaturated condominium market in the Greater Toronto Area. Wang claims to have lost his equity in the Jefferson Project as a result of this.

[16] Wang primarily blames Cameron Stephens for this. These assertions are the subject of the recently issued Wang Civil Action against Cameron Stephens. Wang says that these delays and losses on the Jefferson Project had a domino effect on his and his other companies' ability to pay other creditors (including because of cross-collateralization of security), which in turn resulted in

TAB 19

Yaiguaje et al. v. Chevron Corporation et al.
[Indexed as: Yaiguaje v. Chevron Corp.]

Ontario Reports

Court of Appeal for Ontario,

Hoy A.C.J.O., Cronk and Hourigan JJ.A.

October 31, 2017

138 O.R. (3d) 1 | 2017 ONCA 827

Case Summary

Civil procedure — Costs — Security for costs — Plaintiffs obtaining judgment in Ecuador against Chevron on behalf of 30,000 indigenous Ecuadorian villagers arising from environmental pollution — Plaintiffs bringing action in Ontario to enforce judgment against Chevron and its seventh-level indirect subsidiary Chevron Canada — Defendants moving successfully for summary judgment dismissing claim against Chevron Canada on basis of Chevron Canada's separate corporate identity — Plaintiffs appealing — Motion judge erring in ordering plaintiffs to post security for costs — Motion judge failing to consider justness of that order in circumstances of this case.

In a claim in Ecuador for damages for environmental pollution, the plaintiffs obtained judgment against Chevron in the amount of US$9.5 billion on behalf of approximately 30,000 indigenous Ecuadorian villagers. They brought an action in Ontario to enforce the judgment against Chevron and its seventh-level, indirect subsidiary Chevron Canada. The defendants obtained summary judgment dismissing the claim against Chevron Canada on the grounds that Chevron Canada's shares and assets were not exigible pursuant to the *Execution Act*, R.S.O. 1990, c. E.24 and there was no basis to pierce the corporate veil between Chevron Canada and Chevron so that Chevron Canada's shares and assets became available to satisfy the judgment against Chevron. The plaintiffs appealed. The defendants moved successfully for security for costs in the amount of $972,951. The plaintiffs brought a motion to vary that order.

Held, the motion should be granted and the order for security for costs should be vacated.

In deciding motions for security for costs on appeal, judges are obliged to first consider the specific provisions of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194 governing those motions and then to step back and consider the justness of the order sought in all the circumstances of the case. The motion judge failed to undertake the second part of that analysis. This was public interest litigation, and the funds collected on the judgment would be used for environmental rehabilitation or health care purposes. The environmental devastation to the plaintiffs' lands had severely hampered their ability to earn a livelihood. In contrast, Chevron and Chevron Canada had annual gross revenues in the billions of dollars. It was difficult to believe that either of those corporations required protection for costs awards. It could not be said at this stage that the appeal was [page2 w]holly devoid of merit. The history of this litigation

costs of the proceeding and the appeal "as is just" where an order for costs could be made under rule 56.01.

[18] Rule 61.06 is permissive, not mandatory. In an appeal, there is no entitlement as of right to an order for security for costs. Even where the requirements of the rule have been met, a motion judge has discretion to refuse to make the order: *Pickard v. London (City) Police Services Board*, [2010] O.J. No. 4169, 2010 ONCA 643, 268 O.A.C. 153, at para. 17.

[19] In determining whether an order should be made for security for costs, the "overarching principle to be applied to all the circumstances is the justness of the order sought": *Pickard*, at para. 17; and *Ravenda Homes Ltd. v. 1372708 Ontario Inc.*, [2017] O.J. No. 3414, 2017 ONCA 556, at para. 4.

[20] The appellants move pursuant to s. 7(5) of *Courts of Justice Act* to review and vary the motion judge's order. In fact, although the motion uses the term "vary", they ask the court to set aside the order. No evidence of change in circumstances was tendered. The appellants acknowledge that the impugned order was discretionary. Therefore, the motion judge's decision is afforded deference: *DeMarco v. Nicoletti*, [2017] O.J. No. 2622, 2017 ONCA 417, at para. 3. [page6]

[21] The appellants raise numerous grounds in support of their motion. For present purposes, it is only necessary to consider one: whether the motion judge erred in principle in determining the justness of the order sought. An error in principle is one of the bases on which this court may interfere with a discretionary order: *DeMarco*, at para. 3.

[22] In deciding motions for security for costs, judges are obliged to first consider the specific provisions of the Rules governing those motions and then effectively to take a step back and consider the justness of the order sought in all the circumstances of the case, with the interests of justice at the forefront. While the motion judge concluded that an order for security for costs would be just, with respect, she failed to undertake the second part of that analysis. The failure to consider all the circumstances of the case and conduct a holistic analysis of the critical overarching principle on the motion before her constitutes an error in principle. It therefore falls to this panel to conduct the necessary analysis of the justness of the order sought.

(ii) *Justness of the order*

[23] The Rules explicitly provide that an order for security for costs should only be made where the justness of the case demands it. Courts must be vigilant to ensure an order that is designed to be protective in nature is not used as a litigation tactic to prevent a case from being heard on its merits, even in circumstances where the other provisions of Rules 56 or 61 have been met.

[24] Courts in Ontario have attempted to articulate the factors to be considered in determining the justness of security for costs orders. They have identified such factors as the merits of the claim, delay in bringing the motion, the impact of actionable conduct by the defendants on the available assets of the plaintiffs, access to justice concerns and the public importance of the litigation. See *Hallum v. Canadian Memorial Chiropractic College* (1989), 70 O.R. (2d) 119, [1989] O.J. No. 1399 (H.C.J.); *Morton v. Canada (Attorney General)* (2005), 75 O.R. (3d) 63, [2005] O.J. No. 948 (S.C.J.); *Cigar500.com Inc. v. Ashton Distributors Inc.* (2009), 99 O.R. (3d)

55, [2009] O.J. No. 3680 (S.C.J.); *Wang v. Li*, [2011] O.J. No. 3383, 2011 ONSC 4477 (S.C.J.); and *Brown v. Hudson's Bay Co.*, [2014] O.J. No. 795, 2014 ONSC 1065, 318 O.A.C. 12 (Div. Ct.).

[25] While this case law is of some assistance, each case must be considered on its own facts. It is neither helpful nor just to compose a static list of factors to be used in all cases in determining the justness of a security for costs order. There is no utility in imposing rigid criteria on top of the criteria already [page7 p]rovided for in the Rules. The correct approach is for the court to consider the justness of the order holistically, examining all the circumstances of the case and guided by the overriding interests of justice to determine whether it is just that the order be made.

[26] Having undertaken that analysis, we conclude that the unique factual circumstances of this case compel the conclusion that the interests of justice require that no order for security for costs be made. To conclude otherwise, in our view, would result in an unjust order for security for costs. The pertinent circumstances include the following:

(a) The appellants are seeking to enforce a judgment in which they have no direct economic interest. Funds collected on the judgment will be paid into a trust and net funds are to be used for environmental rehabilitation or health care purposes. This is public interest litigation.

(b) Although there was no direct evidence of impecuniosity before the motion judge, it would be highly impractical to obtain this evidence from the representative plaintiffs, let alone the 30,000 people who would indirectly benefit from the enforcement of the judgment. There can be no doubt that the environmental devastation to the appellants' lands has severely hampered their ability to earn a livelihood. If we accept the findings that underlie the Ecuadorian judgment -- findings that have not yet been undermined in our courts -- Texaco Inc. contributed to the appellants' misfortune.

(c) In contrast to the position of the appellants, Chevron Corporation and Chevron Canada have annual gross revenues in the billions of dollars. It is difficult to believe that either of these two corporations, which form part of a global conglomerate with approximately 1,500 subsidiaries, require protection for cost awards that amount or could amount to a miniscule fraction of their annual revenues.

(d) While the question whether the Ecuadorian plaintiffs have third party litigation funding available to them was left unanswered, there should be no bright line rule that a litigant must establish that such funding is unavailable to successfully resist a motion in an appeal for security for costs. This is especially so in this case, where counsel for the appellants has advised the court he is operating under a contingency arrangement and where there is evidence that Chevron Corporation has sued some of the appellants' former third party funders, and the funders withdrew their financial support. [page8]

(e) It cannot be said, at this stage, that this is a case that is wholly devoid of merit. The motion judge herself acknowledged, at para. 51 of her reasons, that it might be possible to establish that Chevron Canada's shares are exigible under the *Execution Act*.

CAMERON STEPHENS MORTGAGE CAPITAL LTD. Applicant	and	**2011836 ONTARIO CORP., et al.** Respondents

Court of Appeal File Nos. COA-26-OM-0163 (M56997)
Superior Court File No. CV-23-00710795-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED
Proceeding commenced at Toronto

BOOK OF AUTHORITIES OF THE RECEIVER (AS MOVING PARTY AND RESPONDING PARTY)

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