CITATION: Musitano v. Gordon, 2023 ONSC 5587
COURT FILE NO.: CV-20-73207
DATE: 2023-10-10

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Patrick Musitano and Concession Medical Pharmacy Ltd., Plaintiffs

AND:

Daniel G Gordon et al, Defendants

BEFORE: The Honourable Justice M. Bordin

COUNSEL: William D. Dunlop, for the Plaintiffs on the motion for security for costs and the motion to compel attendance at discovery

Howard Borlack, for the Defendants Daniel G Gordon, Dan Gordon Consulting Inc. and Gordon Wealth Management Limited on the motion for security for costs and the motion to compel attendance at discovery

Peter Wardle for the Defendants Sun Life Insurance (Canada) Limited and Sun Life Financial Distributors (Canada) Inc. on the motion to compel attendance at discovery

HEARD: October 3, 2023

ENDORSEMENT

Nature of the Motions and Position of the Parties

[1] There are two motions before me. The plaintiffs move for an order compelling Mr. Gordon to attend examinations for discovery. They say the examinations have been scheduled and postponed three times. Mr. Gordon says that his health issues prevent him from attending discoveries.

[2] The defendants Daniel G Gordon, Dan Gordon Consulting Inc. and Gordon Wealth Management Limited ("the Gordon defendants") seek an order requiring the plaintiffs to post $22,500 each as security for costs within 30 days.

[3] The Gordon defendants assert that the plaintiffs Concession Medical Pharmacy Ltd. ("CMP") and Patrick Musitano are undischarged bankrupts. They submit that a security for costs order is appropriate as the plaintiffs have insufficient assets in Ontario to pay for the Gordon defendants' costs, Mr. Musitano is a nominal plaintiff, and it would be contrary to the administration of justice to permit the plaintiffs to enter into an agreement where

numerous solvent beneficiaries will receive the majority of any recovery from this action and are absolved of any cost consequences by hiding behind the insolvent plaintiffs.

[4] The plaintiffs say that only CMP is an undischarged bankrupt. They say that Mr. Musitano is not a nominal plaintiff, is not impecunious, and is not bankrupt. They assert that Mr. Musitano is financially strained due to the actions of the defendants and that an order for security for costs will impede his prosecution of the action. The plaintiffs say that the Gordon defendants have failed to establish that Mr. Musitano has insufficient assets in Ontario to pay the Gordon defendants' costs and that a security for costs order is not appropriate in the circumstances.

[5] I will deal with the motion for security for costs first.

The Allegations Against the Gordon Defendants

[6] On June 26, 2020, the plaintiffs issued a claim against the defendants claiming approximately $22,000,000 in damages for alleged negligence of the Gordon defendants, breaches of fiduciary duties, negligent supervision, and deceit.

[7] Mr. Musitano alleges that after meeting Mr. Gordon in 2001, Mr. Gordon became his primary investment adviser, was at various times employed by the other defendants, and that in January 2014, Mr. Gordon began full-time employment with CMP as its CFO. Mr. Musitano says that in 2015 Mr. Gordon advised him to transfer most of his personal investments into accounts owned by CMP and that as CFO, Mr. Gordon effectively had control and discretion over Mr. Musitano's and CMP's finances.

[8] Mr. Musitano alleges that Mr. Gordon advised him to purchase numerous life insurance and other insurance contracts through the Gordon defendants and that by 2019 CMP was paying whole life insurance premiums of $146,000 per month. This required CMP to obtain loans, some against the policies, and to liquidate its investment funds. Mr. Musitano estimates that by 2020, CMP and Mr. Musitano had paid a total of $5,400,000 in whole life premiums. The plaintiffs say that by 2019, about $10,000,000 had been withdrawn from CMP's investment accounts because of the life insurance premiums and to repay Mr. Musitano's personal loans to CMP which essentially depleted the entirety of CMP's investments.

[9] The plaintiffs say that by 2020, the cash surrender value of the whole life policies was about $1,080,000 million and the loans taken against the cash surrender values of the policy were about $880,000 resulting in a net value of the whole life policies of $198,000.

[10] The plaintiffs say that the Gordon defendants received substantial compensation from CMP and commissions and bonuses from the sale of the life insurance policies to the plaintiffs.

[11] In his affidavit, Mr. Musitano asserts that the "insolvencies" of the plaintiffs are a consequence of the conduct of the defendants.

Background Facts

[12] CMP was founded in 2001. Mr. Musitano was the owner of CMP. CMP was placed into receivership by the Bank of Montreal in October 2020. BDO Canada Limited ("BDO") was appointed as the receiver manager. CMP was adjudged bankrupt and remains an undischarged bankrupt.

[13] Mr. Musitano filed a Notice of Intention to Make a Proposal (the "Proposal") pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, in April 2021. The Proposal was approved by order of Associate Justice McGraw on February 25, 2022.

[14] On or about November 1, 2021, Mr. Musitano, BDO and Harris & Partners as Proposal Trustee for Mr. Musitano entered into a Master Agreement (the "Master Agreement") in which CMP's interest in this action was assigned to Mr. Musitano. The Master Agreement provides for the distribution of the proceeds of this action, if any.

[15] Mr. Musitano is a pharmacist currently carrying on business as M-Line Pharmacy in which he holds a 50 percent interest. M-Line provides Mr. Musitano with an income of $210,000 per year.

[16] The Gordon defendants have been served with a Notice of Proposal to Impose Administrative Penalties by the Financial Services Regulatory Authority of Ontario ("FRSA") due to their conduct.

Status of the Action

[17] All defendants have defended the action. All statements of defence and crossclaims were served by January 7, 2022. Examinations for discovery of all defendants except for the Gordon defendants were completed during the week of April 24, 2023. The examinations for discovery of the Gordon defendants have been scheduled and postponed several times due to Mr. Gordon's health.

Security for Costs Legal Principles

[18] The Gordon defendants rely on rule 56.01(1)(d) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 (the "*Rules*"), which provides that the court may, on motion by a defendant, make such order for security for costs as is just where it appears that the plaintiff is a corporation or a nominal plaintiff and there is good reason to believe that the plaintiff has insufficient assets in Ontario to pay the costs of the defendant.

[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": *Yaiguaje v. Chevron Corporation*, 2017 ONCA 827, 138 O.R. (3d) 1, para. 19. An order for security for costs is discretionary: *Yaiguaje*, paras. 20 and 21. 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: *Yaiguaje*, para. 22.

The Moving Party's Burden

[20] The initial onus is on the party moving for security for costs to show that the other party falls within one of the circumstances for which an order may be made: *Chill Media Inc. v. Brewers Retail Inc*., 2021 ONSC 1296, para. 9 and authorities cited therein. The burden is modest; the defendant must show that there is a basis for concern about the sufficiency of assets: *Chill Media*, para. 10 and authorities cited therein.

[21] Under rule 56.01(1)(d), the moving party is required to establish that there is good reason to believe that the corporation or nominal plaintiff has insufficient assets to pay the costs. The court in *Lancaster Group Inc. v. Kenaidan Contracting Ltd.*, 2020 ONSC 1653, noted that a moving defendant must adduce evidence to demonstrate that its claim that the plaintiff has insufficient assets is more than conjecture, hunch or speculation. To support an insufficiency of assets, it has been said that the moving party must raise a reasonable belief that the corporation is without "real, substantial and exigible" assets.

[22] It is undisputed that CMP is still bankrupt. The evidence from the Gordon defendants is that based on insolvency records, CMP has no assets. The Gordon defendants have met their burden with respect to CMP.

[23] The Gordon defendants rely on insolvency records which indicate that Mr. Musitano's liabilities exceed his assets by almost $7,000,000. In my view, the Gordon defendants have met their initial burden to establish that there is good reason to believe that Mr. Musitano has insufficient assets in Ontario to pay the costs of the defendants.

[24] The Gordon defendants must also establish that Mr. Musitano is a nominal plaintiff.

[25] The Gordon defendants rely on the terms of the Master Agreement. Section 1.2 of the Master Agreement provides that the costs of this action including fees, disbursements, and taxes are the responsibility of Mr. Musitano or any third party on behalf of Mr. Musitano. The Gordon defendants say that to date, no third parties who could satisfy a cost award have been identified.

[26] Section 1.6 of the Master Agreement provides that Mr. Musitano may terminate, discontinue, or abandon this action in his reasonable discretion with the written consent of BDO, which is not to be unreasonably withheld where it is determined that the action will likely be unsuccessful or the costs of continuing with the action will outweigh the expected recovery. BDO may then require assignment of the claim from Mr. Musitano. If so, Mr. Musitano must continue to support the claim and he will be indemnified for any costs awarded against him after the date of the assignment.

[27] Section 1.8 of the Master Agreement provides for the distribution of the proceeds of the action, if any. Any proceeds recovered are first applied to pay the costs of the action to a maximum amount of $550,000 inclusive of disbursements and HST, the next $1,200,000 of the proceeds are to be paid to BDO, then any remaining funds are applied to the balance of costs, if any, in excess of $550,000. If there are any proceeds remaining, they are applied as follows: 50% to BDO; 40% to Mr. Musitano's Proposal in satisfaction of all creditors'

claims against Mr. Musitano; and 10% to Mr. Musitano. Lastly, in the event that the distribution from the net proceeds to BDO as contemplated in the agreement exceeds the amounts owed to BDO as the court appointed receiver, the excess net proceeds are to be distributed pursuant to Mr. Musitano's Proposal to satisfy creditors and Mr. Musitano pro rata.

[28] It is clear from section 1.8 that Mr. Musitano's personal recovery is minimal in the lower range of recovery from the action. For example, if he recovers $2,000,000 from the action, assuming costs of $600,000, he would be entitled to $20,000.

[29] Section 1.9 of the Master Agreement indicates that Mr. Musitano is to use best efforts to negotiate a settlement of the action without the involvement of his former spouse or her trustee in bankruptcy and that payments to his former spouse will be his sole responsibility to pay from any of his proceeds of the action. The Gordon defendants say this indicates there is a further creditor who would be entitled to any limited funds received by Mr. Musitano.

[30] The Gordon defendants argue that the structure of the Master Agreement indicates that Mr. Musitano is in fact a nominal plaintiff – the real beneficiaries of the action are Mr. Musitano's lawyers for the costs of the action, BDO, and Mr. Musitano's creditors.

[31] The Gordon defendants rely on *Smoljan v. Musiala*, 2019 ONSC 6776, to assert that Mr. Musitano is a nominal plaintiff. In *Smoljan*, the trustee commenced an action for an order that Smoljan was the legal owner of a property to make the value in the property available to Smoljan's creditors. The court held that the trustee was a nominal plaintiff. There was no analysis of the issue, but it likely turned on the fact that the trustee pursued the action for the benefit of others, not itself.

[32] At paragraph 69, the court in *Smoljan* held that the trustee had access to funds from creditors who may have an interest in pursuing the action for their own gain and that it would be patently unjust for unsecured creditors to be permitted to prosecute this case through the trustee, as against another creditor, while enjoying immunity from any costs order.

[33] The court in *Smoljan* also held that the trustee had no assets in Ontario to satisfy costs but that the trustee could not establish that it was impecunious. Essentially, the trustee was treated as though it was a corporation for the purposes of determining whether it was impecunious. The court found that the trustee must provide evidence that the creditors are unable to advance funds to allow security to be posted.

[34] The Gordon defendants argue that this reasoning applies to the circumstances before the court. They say Mr. Musitano brings this action primarily for the benefit of creditors and those creditors have not led evidence of their ability to pay costs. The Gordon defendants submit that those creditors should not be allowed to hide behind the Master Agreement and Mr. Musitano so that they are not exposed to costs.

[35] Mr. Musitano says that he is not a nominal plaintiff. He says the claim predated the bankruptcy proceedings by months. Mr. Musitano says that he is not a bankrupt – he made the Proposal which was approved by the creditors and approved by court order, and if he complies with the Proposal, he does not go bankrupt.

[36] Mr. Musitano submits that he is not a bare trustee as in *Smoljan*, that he is an active plaintiff, that he is responsible for paying costs of this action, and that he has an interest in the outcome of the litigation. Further, he says that the claims of CMP have been assigned to him, and that he is owed money by CMP for loans made to CMP which were a part of the Gordon defendants' plans.

[37] A nominal plaintiff within the meaning of the rule is one who has no real interest of his own in the outcome of the litigation: *Bedi Estate v. Bajwa*, 2003 CanLII 26044 (ON SC), para. 13. Most commonly, a nominal plaintiff is a "straw man" or a "front man" who does not have a real interest in the litigation and is merely standing in for another party in order to shield that other party from a costs order: *Sadat v. Westmore Plaza Inc.*, 2013 ONSC 469, para. 24 and the authorities cited therein.

[38] I find that Mr. Musitano is not a nominal plaintiff. Although there are others who are entitled to the proceeds of the action before Mr. Musitano, and Mr. Musitano is only entitled to a small percentage of net proceeds from the action, he does have an interest in the outcome of the litigation. He is also responsible for paying the costs of the litigation before the action is concluded. The first payment from any proceeds of the litigation are to repay those costs. Finally, it cannot be said that just because proceeds of the action will go to Mr. Musitano's creditors he does not have an interest in the litigation. Paying off his creditors and fulfilling his obligations under the Master Agreement and Proposal will prevent his bankruptcy, thereby giving Mr. Musitano an interest in the litigation.

[39] Accordingly, the Gordon defendants have met their burden with respect to CMP, but not with respect to Mr. Musitano. The motion for security for costs against Mr. Musitano personally is dismissed.

The Plaintiffs' Burden

[40] If the moving defendant meets its initial burden, the plaintiff then has the onus to establish that an order for security for costs would be unjust. The second stage of the test "is clearly permissive and requires the exercise of discretion which can take into account a multitude of factors": *Coastline Corporation Ltd. et al. v. Canaccord Capital Corporation*, 2009 CanLII 21758 (ON SC).

[41] As set out in *Coastline* and the authorities cited in paragraph 7 therein, the plaintiff can meet its onus by 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 can establish that the claim is not "plainly devoid of merit", or

c. if the plaintiff cannot establish that it is impecunious, but the plaintiff does not have sufficient assets to meet a costs order, the plaintiff must meet a high threshold to satisfy the court of its chances of success.

[42] A corporate plaintiff relying on impecuniosity must show not only that it does not have sufficient assets itself but also that it cannot raise the funds for security for costs from its shareholders and associates. A corporate plaintiff must provide substantial evidence about the ability of its shareholders or others to finance the litigation and a bare assertion of inability will not suffice: *Chill Media* and the authorities cited therein.

[43] There is no direct evidence before me as to the ability of CMP to raise funds from its shareholders and associates. In his affidavit, Mr. Musitano deposed that he was the CEO and owner of CMP and has been assigned CMP's claim.

[44] A litigant who relies on impecuniosity bears the onus of proof on this point and must do more than adduce some evidence of impecuniosity and must satisfy the court that he or she is genuinely impecunious with full and frank disclosure of his or her financial circumstances and his or her incapacity to raise the security. There is a high evidentiary burden to demonstrate impecuniosity, and if full disclosure is not made, impecuniosity will not be a factor in the exercise of the court's discretion: *Chill Media*, para. 12 and authorities cited therein.

[45] Bald statements of impecuniosity unsupported by detail are not sufficient. The threshold can only be reached by tendering complete and accurate disclosure of the plaintiff's income, assets, expenses, liabilities and borrowing ability, with full supporting documentation for each category where available or an explanation where not available: *Coastline*, para. 7 and the authorities cited therein.

[46] To meet the onus to establish impecuniosity, at the very least, would require an individual plaintiff to submit his most recent tax return, complete banking records and records attesting to income and expenses: *Coastline*, para. 7 and the authorities cited therein.

[47] Full financial disclosure requires a plaintiff to establish the amount and source of all income, a description of all assets including values, a list of all liabilities and other significant expenses, an indication of the extent of the ability of the plaintiff to borrow funds, and details of any assets disposed of or encumbered since the cause of action arose: *Coastline,* para. 7 and the authorities cited therein.

[48] A defendant "can choose not to cross-examine if the plaintiff fails to lead sufficient evidence". The decision not to cross-examine does not convert insufficient evidence into sufficient evidence: *Coastline*, para. 7 and the authorities cited therein.

[49] To avoid having to post security for costs where impecuniosity is established, the plaintiff need only demonstrate that his or her claim is not plainly devoid of merit: *Chill Media*, para. 14 and authorities cited therein.

[50] Mr. Musitano deposes that he is not impecunious but that any order for security for costs will "more likely than not terminate the continued prosecution of this action" of which he is the sole financier.

[51] Mr. Musitano attaches to his affidavit a statement of affairs filed in support of the Proposal dated April 14, 2021. He says his current assets are as set out in that document, which is now almost two and a half years old, He says that his most valuable asset other than the potential proceeds from this action are his 50 percent interest in M-Line Pharmacy. Mr. Musitano says that M-Line Pharmacy is a start up company and will take time for its value to mature. However, he provides no current details on M-Line's equity, income, assets and expenses.

[52] Mr. Musitano confirms he earns $210,000 a year and supports four children aged 15 through 20, with the oldest two being in post-secondary institutions. He provides no details of his actual current expenses.

[53] Pursuant to the Proposal, Mr. Musitano is to make 24 monthly payments of $5,500 to his Proposal Trustee to be distributed to the Trustee and creditors. It appears from the Master Agreement that those payments will terminate on or about January 25, 2024. After that, Mr. Musitano will have an additional $5,500 per month of disposable income.

[54] Mr. Musitano provides no other evidence of his financial wherewithal.

[55] Mr. Musitano has fallen far short of establishing impecuniosity or that he cannot fund CMP or the litigation. Therefore, CMP has not established that it is impecunious.

Justness of a Security for Costs Order

[56] 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 rule 56 have been met: *Yaiguaje*, para. 23.

[57] To avoid posting security where the plaintiff fails to establish impecuniosity, the plaintiff must demonstrate a stronger case on the merits or some other reason to justify the court not ordering that security be posted. If the plaintiff shows a real possibility of success, then the court may conclude in the circumstances of the case, justice demands that he or she not be required to post security. Other relevant factors include the nature and complexity of the plaintiff's action and the likelihood that an order to post security will impede the plaintiff from pursuing his or her claim: *Chill Media*, para. 14 and authorities cited therein.

[58] 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. 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: *Yaiguaje*, paras. 24 and 25.

[59] Mr. Musitano says that the termination of the action would have serious consequences to his creditors who stand to gain from the action. I am not satisfied that Mr. Musitano has established that an order to post security will impede the plaintiffs from pursuing their claim.

[60] The plaintiffs assert that the Gordon defendants do not require protection for a costs award because the Gordon defendants have "received millions of dollars in remuneration from the plaintiffs over the last several years". The plaintiffs draw a comparison to Chevron in *Yaiguaje*. While it appears that the Gordon defendants have received substantial funds from or through the plaintiffs, the comparison is not apt. I have no information about the Gordon defendants – the size of its operations, its revenues and its scope – but I seriously doubt it is on par with a global conglomerate such as Chevron.

[61] The plaintiffs assert that the fact that CRA is a creditor in the amount of $1,900,000 pursuant to the Master Agreement makes this public interest litigation. I do not agree. That debt is owed by the plaintiffs. This is private litigation. It just so happens that one of the plaintiffs' creditors is CRA.

[62] With respect to the merits of the plaintiffs' case, a security for costs motion is not a decision on the merits akin to a summary judgment motion and the analysis of the merits is primarily based on the pleading with recourse to the evidence filed on the motion, and in appropriate cases, the excerpts from the transcripts from the examinations for discovery: *Chill Media*, para. 14 and authorities cited therein.

[63] The plaintiffs assert that the financial circumstances of the plaintiffs are a result of the actions of the defendants. Solely for the purposes of this motion, I am satisfied on the material before me on this motion that the plaintiffs have established a strong case on the merits on this point.

[64] On the materials before me, the plaintiffs have shown a real possibility of success. The scheme outlined by the plaintiffs of life insurance and other insurance policies totalling $146,000 per month in premiums in 2019 speaks for itself as does the total premiums paid of $6,406,580 between 2014 and 2020. Further, the FRSA report indicates that the Gordon defendants have received $900,000 in commissions from these policies between 2008 and 2020 with most of the commission being earned during Mr. Gordon's tenure as CFO of CMP. In saying this, I do not prejudge this matter, but am commenting on the evidence before me. I note that Mr. Gordon has not yet made himself available to be examined for discovery.

[65] The Gordon defendants say that the plaintiffs have failed to provide the Gordon defendants and the court with the evidence required to assess their ability to pay costs. I agree that the plaintiffs have failed to do so. The Gordon defendants also say that they are only seeking a fraction of the costs by way of security for costs compared to what Mr. Musitano would be able to recover in costs by way of the Master Agreement. While I agree, in my view the amount of security for costs sought is not a proper consideration in determining whether a court should exercise its discretion to order security for costs at all and whether such an order is just. The amount of security for costs is to be determined after an assessment is made of the justness of making an order.

[66] Balancing these various considerations, in the circumstances of this case it is not just to order security for costs against the plaintiffs.

Motion to Compel Attendance of Mr. Gordon at Examination for Discovery

[67] It is not disputed that Mr. Gordon was to attend discoveries in late November 2022. The examination was postponed due to Mr. Gordon's health issues arising out of his treatment for prostate cancer. Mr. Gordon's examinations were then scheduled for February 21 and 22, 2023. Mr. Gordon advised he would not be attending those examinations due to health issues.

[68] Justice Goodman ordered that Mr. Gordon attend examination for discovery by August 23, 2023. Mr. Gordon's examination was scheduled for August 14 and 15, 2023. On or about July 31, 2023, Mr. Gordon requested that these dates be vacated due to health issues.

[69] Mr. Musitano proposed that the examination proceed in one to two hour increments via Zoom in order to accommodate Mr. Gordon's health issues. This was declined as Mr. Gordon said that he was experiencing severe fatigue and problems with concentration.

[70] Mr. Musitano says that approximately four to six hours of examination of Mr. Gordon are required.

[71] Mr. Gordon says that he is waiting to see specialists about his condition. He says he is constantly exhausted and spends much of his day in bed falling asleep. He says he has not been able to review the thousands of documents which have been produced because he can only sustain efforts of 20 to 30 minutes per day.

[72] Mr. Gordon relies on a July 31, 2023, letter from his radiation oncologist, Dr. Hallock. In the letter, Dr. Hallock says that a side effect experienced by Mr. Gordon is the need for sudden, urgent and rapid access to restrooms. He says the discovery process will put incredible pressure on Mr. Gordon and asks that Mr. Gordon's examination be deferred. Dr. Hallock does not mention the exhaustion Mr. Gordon says he experiences that only allows him 20 to 30 minutes of effort each day.

[73] Mr. Gordon and Dr. Hallock provide no timeline for Mr. Gordon to be able to attend examinations.

[74] Mr. Gordon also says that Mr. Musitano has refused to attend examinations until Mr. Gordon is examined. Mr. Musitano would be content with an order that requires both parties to be examined.

[75] Mr. Gordon's evidence provides no assistance to the court to determine the appropriate deferral of discoveries. The other parties have been discovered. This action must move forward.

[76] I order that Mr. Gordon be examined between November 30, 2023, and February 15, 2024. He is to be examined by video for up to six hours of questioning time. If desired by Mr. Gordon, his examination may take place over a period of three days during the course of one week, with examinations broken up over those three days in two-hour increments. Mr. Musitano is to be examined the week after Mr. Gordon's examination is completed.

Costs

[77] The parties are encouraged to resolve the issue of costs of the motions themselves. If they are unable to do so, they may submit a bill of costs and make written submissions consisting of not more than two double-spaced pages in length, together with excerpts of any legal authorities referenced, and any offers according to the following timetable:

a. The plaintiffs shall serve their bill of costs and submissions, if any, by no later than October 25, 2023.

b. The Sun Life defendants shall serve their bill of costs and submissions, if any, with respect to the motion to compel attendance at discovery by no later than October 25, 2023.

c. The Gordon defendants shall serve their bill of costs and submissions, if any, by no later than November 8, 2023.

[78] All submissions are to be filed with the court, with a copy also provided to the judicial assistants at: St.Catharines.SCJJA@ontario.ca, by end of day November 8, 2023.

[79] If no submissions or written consent to a reasonable extension are received by the court by November 3, 2023, the matter of costs will be deemed to have been settled.

M. Bordin, J.

Date: October 10, 2023