

**CITATION:** Unionville Education Inc. v. Song, 2024 ONSC1243  
**COURT FILE NO.:** CV-22-676075  
**DATE:** February 28, 2024

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Unionville Education Inc. v. Yuchen Song and Lakeside Cape Inc. o/a Toronto Economics Management College (claim);  
Yuchen Song and Lakeside Cape Inc. o/a Toronto Economics Management College v. Unionville Education Inc., Tiancheng Kuang, Shihua Lu, Chiofaichio, Xiachuan Guo and Lijuan Lin (counterclaim);

**BEFORE:** ASSOCIATE JUSTICE C. WIEBE

**COUNSEL:** Calvin Zhang for Lakeside Cape Inc. o/a Toronto Economics Management College and Yuchen Song;  
Sandra Hsia for Unionville Education Inc.

**HEARD:** February 23, 2024.

**ENDORSEMENT**

[1] Yuchen Song and Lakeside Cape Inc. o/a Toronto Economics Management College (“TEMC”) brought this motion on February 23, 2024 for an order requiring the plaintiff, Unionville Education Inc. (“UEI”) post \$41,443.46 as security for the costs of TEMC in this action.

[2] It also brought a motion for the following relief which was not opposed: an order that the noting in default be set aside; an order that the defendants have leave to serve a statement of defence and counterclaim; and an order that Tian Cheng Kuang attend at a further discovery to answer questions arising from his answers to undertakings. I made those orders. Therefore, the argument on the motion focused on security for costs.

[3] A few days before the hearing of the motion, the defendants tried to serve, file and upload a cross-motion seeking an order that Ms. Song answer the 13 undertakings, 1 refusal and 14 questions taken under advisement at her examination for discovery on January 27, 2023, namely 13 months ago. Mr. Zhang stated that Ms. Song had made no effort to comply with her undertakings over the last 13 months due to this outstanding motion for security for costs and her desire not to incur costs. I did not allow this cross-motion to be heard as it had not been scheduled for this time; but I did take the fact of these unanswered undertakings into consideration in fashioning a “just” order for security for costs.

[4] The underlying action concerns the purchase by UEI of most of the shares in TEMC from Yuchen Song, the sole shareholder of TEMC. TEMC is an educational institution. UEI seeks to have the share purchase agreement rescinded on account of alleged misrepresentations, and it seeks

damages. The defendants defended denying these allegations. They assert a counterclaim against UEI and its five shareholders (including Tian Cheng Kuang) for improper business practices, misappropriation of property, economic interference and unjust enrichment. They claim \$1,000,000 in damages and injunctive relief.

[5] Having reviewed the evidence, and the written and oral submissions, I ordered orally that UEI post \$20,000 in security for costs as follows: \$5,000 to be posted in thirty (30) days from February 23, 2024; \$5,000 to be posted in thirty (30) days after the defendants answer their discovery undertakings; and \$10,000 in thirty (30) days after the action is set down for trial. I gave oral reasons, but unfortunately there was no reporter. I now write out my reasons for this decision:

- a) The defendants rely on Rule 56.01(1)(d), namely the rule which specifies that the court should make an order for security for costs that is “just” where it appears that the plaintiff is a corporation and “there is good reason to believe” that the plaintiff has insufficient assets in Ontario to pay the defendants’ costs.
- b) The defendants not only met their initial onus of showing this “good reason to believe,” but also established the ultimate proof that UEI in fact has insufficient assets in Ontario to pay costs. They did this by virtue of the admission at discovery by Mr. Kuang, the most active of the UEI shareholders, that UEI has no assets. Indeed, the only evidence of UEI assets in the motion material were the bank statements concerning a UEI bank account that at the moment contains no more than \$13,676. Bank accounts are extremely liquid assets, and therefore are of little worth in a security for costs motion; see *Tiberian Investment Ltd. v. 297518 Ontario Limited*, 2018 ONSC 6253 at paragraph 13.
- c) UEI did not argue that it is impecunious, namely that it is entirely incapable of funding security for costs and that its case is meritorious. That made sense as there was no evidence as to the wherewithal of its shareholders to post security for costs.
- d) UEI instead tried to avoid an order for security for costs by arguing that its case has a good chance of success and that it would be unjust to require it to post security for costs given the inadequacy of its assets to pay costs; see *2311888 Ontario Inc. v. Ross*, 2017 ONSC 1295 at paragraph 17. There was evidence that indicated that the defendants may have made material misrepresentations about the non-existence of three civil actions involving UEI at the time of the share purchase agreement. Ms. Hsia also argued that there was evidence the defendants failed to give access to TEMC’s bank accounts and assets. However, I did not accept this argument. The defendants in their pleading deny the allegation about misrepresentation. They assert that there was disclosure, and that the plaintiff knew about the civil actions. The defendants also deny that they failed to give access to assets. There was simply not enough of an evidentiary record in the motion to determine the plaintiff’s chance of success. Credibility will no doubt be a critical factor, and this requires a trial.
- e) The defendants filed a Bill of Costs in support of the claim for security of \$41,443.46 in partial indemnity costs for the entire action. This bill was not unreasonable for a case of this size and complexity. It showed an anticipated five day trial and four days for discoveries. However, I decided to reduce the claim by more than half by virtue of the fact that the defendants had asserted a counterclaim that exceeded in size the plaintiff’s claim. It also

appeared to be a counterclaim with some complexity as it involved claims for injunctive relief. The Bill of Costs did not account for this counterclaim. It would be unjust to require a plaintiff to post security for the costs incurred by the defendants in creating and pursuing their own claim against the plaintiff.

- f) I also concluded that it would not be just to order more security for costs due to the defendants unreasonable unilateral decision not to comply with their discovery undertakings over the long period while this motion was pending. This conduct showed me that the defendants are not respectful of their legal obligations. Undertakings are solemn promises under oath to provide the answers in a timely way. Rule 31.07(1)(c) specifies that a failure to comply with undertakings within 60 days amounts to a failure to answer, with all of the consequences that flow from that under Rule 31.07(2) and Rule 34.15. I have decided that one of the consequences is a diminishment of entitlement to security for costs.

[6] As a result, I made the order for security for costs indicated above.

[7] Concerning the costs of the motion, the defendants filed a costs outline that showed \$6,6616.15 in substantial indemnity costs and \$4,847.13 in partial indemnity costs. The plaintiff filed a costs outline that showed \$5,942.50 in actual costs, \$5,348.25 in substantial indemnity costs and \$3,565.50 in partial indemnity.

[8] Mr. Zhang argued that the defendants should get an award of the partial indemnity amount, \$4,847.13, due to their success on this motion. Ms. Hsai argued that the parties should absorb their own costs of the motion despite the defendants' success. She reminded me of the defendants unilateral decision not to comply with undertakings, and pointed out that they served and filed their motion material only 9 days before motion.

[9] I noted that, despite scheduling this motion over a year ago, the defendants did not serve, file and upload their motion material until February 12, 2024, namely 9 days before the motion. This is unacceptable. It denied the parties an opportunity to cross-examine on affidavits. Indeed, it denied the parties the opportunity to have a meaning conversation about resolving the issue of security for costs. This was another factor in my decision. I also agreed with Ms. Hsai's criticism of the defendants' conduct in refusing to answer their undertakings. In the end, I agreed with Ms. Hsia and ordered that the parties absorb their own costs of the motion.

[10] In conclusion, I made the following orders:

- a) The plaintiff must post \$20,000 in security for costs as follows:
- \$5,000 must be posted in 30 days from February 23, 2024;
  - \$5,000 must be posted in thirty (30) days after the defendants answer their discovery undertakings; and
  - \$10,000 must be posted in thirty (30) days after the action is set down for trial;
- b) The noting in default is set aside;

- c) The defendants have leave to serve a statement of defence and counterclaim;
- d) Tian Cheng Kuang must attend at a further discovery to answer questions arising from his answers to undertakings;
- e) The parties must absorb their own costs of this motion.

[11] Concerning the second tranche of security for costs, I made it clear that the thirty period is triggered by the defendants answering all of their undertakings. It is not triggered when the plaintiff or the court is satisfied by the answers.

[12] The parties should agree on a form of order that reflects my ruling, and I will sign it.

**DATE:** February 28, 2024

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**ASSOCIATE JUSTICE C. WIEBE**