

COURT OF APPEAL FOR ONTARIO

CITATION: Dramel Limited v. Multani, 2024 ONCA 502

DATE: 20240619

DOCKET: M55164 (COA-23-CV-0675)

Huscroft J.A. (Motions Judge)

BETWEEN

Dramel Limited

Plaintiff
(Respondents/Moving Party)

and

Gurnam Multani and Surjit Multani

Defendants
(Appellants/Responding Parties)

Mahgol Taghivand and Aoife Quinn, for the moving party

James Clark, for the responding parties

Heard: June 13, 2024 by video conference

ENDORSEMENT

[1] The Multanis appeal from an order requiring them to pay mortgage debts owed to the moving party totaling over \$25 million, along with various costs orders. The moving party brings a motion seeking security for costs.

[2] The Multanis requested an adjournment in order to obtain updated financial information they said would demonstrate that security was unnecessary. I declined this request. The Multanis had ample time to prepare and there is no basis to adjourn given the history of extensive procedural delay in this case.

[3] Security for costs is governed by r. 61.06(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194:

61.06 (1) In an appeal where it appears that,

(a) there is good reason to believe that the appeal is frivolous and vexatious and that the appellant has insufficient assets in Ontario to pay the costs of the appeal;

(b) an order for security for costs could be made against the appellant under rule 56.01; or

(c) for other good reason, security for costs should be ordered,

a judge of the appellate court, on motion by the respondent, may make such order for security for costs of the proceeding and of the appeal as is just.

[4] The award of security for costs is discretionary and the overarching principle to be applied is the justness of the order sought.

[5] I am satisfied that there is good reason to believe the Multanis' appeal is frivolous and vexatious. The Multanis concede that the loans have not been repaid. Moreover, they have acknowledged the amount owing in two forbearance agreements.

[6] The motion judge made significant credibility findings against the Multanis. Significantly, the motion judge found that Mr. Multani deliberately attempted to mislead the court by taking the position that his signatures on the forbearance agreements were forgeries. He alleged fraud and forgery and maintained these claims in his affidavit and cross-examination, only to abandon them in his answers

to undertakings before the motion was argued. The Multanis appear to be simply attempting to delay repaying debts long overdue.

[7] I am also satisfied that there is good reason to believe the Multanis have insufficient assets to pay the appeal costs. Mr. Multani filed only a brief affidavit on this motion at the last minute, asserting that security was unnecessary and that he had sufficient assets to pay his creditors in any event. But it is clear that the Multanis have not paid anything on the mortgages that are in default. The properties appear to be subject to other significant debts including municipal and CRA taxes as well as liens, and the Multanis have failed to pay even a small outstanding costs order for the production of transcripts.

[8] In summary, the criteria under r. 61.06(1)(a) are met. That is a sufficient basis to grant the motion for security, though I would add that the motion could also be granted under subsection (1)(c): this is an appeal with at best a minimal prospect of success involving an appellant with a history of unwillingness to pay, against whom findings of misconduct have been made. The risk that any costs orders made on the appeal will not be obeyed is considerable.

[9] In all of the circumstances, it is just that the order be made in the amount sought by the moving party, which is lower than its full indemnity entitlement.

[10] Accordingly, the Multanis shall post \$50,000 in security for costs on the appeal within 30 days of the order. In these circumstances, it is also appropriate

for the Multanis to post security for the costs order below, \$147,453.26: *Tsai v. Dugal*, 2021 ONCA 170, at para. 15, within 30 days of the order, and I so order.

[11] Until the security is posted, the Multanis may not take any further steps in the proceeding and the responding party is not required to take any step in the proceeding, except with respect to any review of this order that might be sought.

[12] The Multanis are entitled to reasonable costs on this motion, which I fix at \$15,000, all inclusive.

“Grant Huscroft J.A.”