

**CITATION:** Hoang v Mann Engineering Ltd. 2024 ONSC 3681  
**COURT FILE NO.:** CV-22-678610  
**MOTION HEARD:** 20240610

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** K. Matthew Hoang, Plaintiff

**AND:**

Mann Engineering Ltd., Aris Building Technologies, Cartwright Management, Mann Enterprises, Wu Ventures, Hay Solar Ltd. and Gigajoule Research and Development Ltd. (carrying on business as the "Mann Group"), Defendants

**BEFORE:** Associate Justice Jolley

**COUNSEL:** Ted Flett, counsel for the moving party defendants

K. Matthew Hoang, self-represented responding party plaintiff

**HEARD:** 10 June 2024

**REASONS FOR DECISION**

- [1] The defendants bring this motion for an order requiring the plaintiff to post \$151,971.35 as security for costs. This amount is not their anticipated costs to defend this action but is the amount the defendants argue plaintiff already owes them pursuant to various court orders made in his two earlier actions against them.
- [2] The defendants argue that the plaintiff should be required to post security for costs because he has failed to pay these prior costs awards. They argue this both as an independent ground and as evidence that there is good reason to believe the plaintiff has insufficient assets in Ontario to pay the defendants' costs.
- [3] An unpaid costs order is a ground upon which the court may order a plaintiff to post security for the incurred and expected costs of the present action (rule 56.01(1)(c)). It is undisputed that the plaintiff has not paid the following costs to the defendants, which total \$123,401.10:
- (a) \$72,532.44 - August 22, 2014;
  - (b) \$5,000 - April 24, 2015;
  - (c) \$1,000 - June 18, 2015;
  - (d) \$1,500 - December 2, 2015;
  - (e) \$1,500 - November 22, 2017;
  - (f) \$25,618.66 - November 4, 2019;
  - (g) \$750 - February 12, 2020;

- (h) \$15,000 - December 16, 2020; and
- (i) \$500 - October 21, 2021.

- [4] The defendants also argue there is good reason to believe that the action is frivolous and vexatious, itself a ground for an order requiring a plaintiff to post security for costs (rule 56.01(1)(e)). I do not conclude on the evidence before me that the action reaches the stage of being frivolous or vexatious. While I echo the comments of Koehnen, J. in his endorsement of 11 October 2023 that “there is a significant risk that the third action will fall afoul of *res judicata*, issue estoppel and abuse of process”, the record before me is not sufficient for me to determine that the action crosses over to one meeting the test under rule 56.01(1)(e).
- [5] The defendants have met the onus of demonstrating that the matter comes within rule 56.01(1)(c), and the onus now shifts to the plaintiff to demonstrate that an order for security for costs would be unjust.
- [6] The plaintiff argues that he should not be ordered to post security for costs because his present financial difficulties stem from the defendants’ wrongdoing which cost him his job. He did not file an affidavit on this motion to support that contention. Instead, he argued that Glustein, J. made a finding that the plaintiff was terminated because of the defendants’ conduct in serving his employer with an inaccurate notice of garnishment. That is not what Glustein, J. found. His Honour stated: “Ger’s [the employer’s president’s] evidence set out above demonstrates that Hoang’s termination arose due to his alleged surreptitious and deceptive conduct while employed at RLC, not because of the existence of the garnishment proceedings (emphasis added)” (*Hoang v Mann Engineering* 2019 ONSC 6383 at paragraph 90).
- [7] The plaintiff has not demonstrated that it would be unjust to order him to post security for costs.
- [8] The defendants seek security in the amount of the outstanding costs awards. While failure to pay a costs order may give rise to other remedies such as a stay under rule 60.12, an order that a party pay outstanding historic costs is not an available remedy under rule 56 and not one I would order were it available. The intention of rule 56 is to ensure a plaintiff has provided security to satisfy any costs award made in the defendant’s favour in the proceeding.
- [9] The defendants have not provided much evidence about their anticipated costs to defend this action. There is no anticipated bill of costs, for instance. Given the plaintiff position that he intends to bring a motion for summary judgment, the defendants point to an award of costs made by Glustein, J. in favour of the defendants on a summary judgment motion in the second action between these parties. Glustein, J. fixed those costs on a partial indemnity basis in the all-inclusive amount of \$25,618.66 payable by the plaintiff to the defendants.

- [10] Absent a proposed bill of costs, I am not prepared to order that amount in its entirety as security, but I recognize it is likely the defendants will incur a similar level of costs for what will be a similar summary judgment process. As noted by Vermette, J. in her endorsement of 5 December 2022 in this action, motions for summary judgment often require the preparation of substantial materials.
- [11] An order for security for costs must “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.” (*Yaiguaje v. Chevron Corporation* 2017 ONCA 827). In these circumstances, I find it just that the plaintiff to post security for costs in the amount of \$10,000 in the next 60 days and a further \$5,000 in security at least 60 days before the hearing of his summary judgment motion. Pursuant to rule 56.05, the plaintiff may not take any step in the proceeding until the security has been provided, other than an appeal from this order.
- [12] Given the defendants’ limited success on the motion, and the lack of a bill of costs for this motion, I make no order as to costs.

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Associate Justice Jolley

**Date:** 26 June 2024