

COURT OF APPEAL FOR ONTARIO

CITATION: Rathod v. Chijindu, 2024 ONCA 420

DATE: 20240527

DOCKET: M55073 (COA-24-CV-0272)

Harvison Young, Sossin and Gomery JJ.A.

BETWEEN

Harsha Rathod

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

Ijeoma Chijindu, acting in person/moving party

Joy Chijindu, acting in person/moving party

Christian Chijindu, acting in person/moving party

Amandeep Sidhu, for responding party, Harsha Rathod

Brian Belmont, for responding party, Bluekat Capital Corp.

Heard: May 21, 2024

REASONS FOR DECISION

[1] Ijeoma Chijindu moves to set aside the April 25, 2024 order of Justice Lois B. Roberts (*Rathod v. Chijindu*, 2024 ONCA 317). The motion judge granted the respondents' motion for costs and required Ms. Chijindu, along with the other appellants, to post security for costs of \$35,605.12.

[2] At the outset of her oral submissions, Ms. Chijindu said that she was unable to attend the hearing before the motion judge. The endorsement indicates that Ms. Chijindu requested an adjournment and did not appear. The motion judge denied the adjournment request because there was no evidence to justify it. She also noted that the appellant Christian Chijindu spoke on Ms. Chijindu's behalf and that a joint factum was filed on behalf of all the appellants. Ms. Chijindu was therefore not denied an opportunity to make submissions before the motion judge.

[3] We do not accept Ms. Chijindu's arguments on the merits of her motion.

[4] The motion judge ordered security for costs on two bases, finding that the criteria at both r. 61.06(1)(a) and (c) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, were met.

[5] Ms. Chijindu contends that the motion judge erred in finding that she did not have the means to pay costs if she is unsuccessful on this appeal. We are not persuaded that the motion judge committed any error or that there is otherwise a basis to set aside her determination that security for costs were appropriate under

r. 61.06(1)(a). Even if there were, Ms. Chijindu did not identify any basis to intervene with the motion judge's determination under r. 61.06(1)(c), which permits the granting of security for costs "for other good reason".

[6] Relying on *Henderson v. Wright*, 2016 ONCA 89, at para. 27, the motion judge found that that the appeal had a very low prospect of success and, moreover, "even if the responding parties have sufficient assets to pay appeal costs as they allege, their past failures to pay their mortgages and the outstanding costs orders demonstrate that they will not voluntarily pay appeal costs and that it will be 'nearly impossible to collect' these costs."

[7] We see no basis to interfere with the motion judge's findings, which are entitled to deference. We dismiss the motion.

[8] The respondents are entitled to full indemnity costs under the terms of their agreements with the appellants, so long as the costs claimed are reasonable. The motion is accordingly dismissed with all-inclusive costs of \$6,000 for Ms. Rathod and \$4,000 for Bluekat Capital Corp. payable by the appellants.

"A. Harvison Young J.A."

"L. Sossin J.A."

"S. Gomery J.A."