



**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
GENERAL DIVISION**

**Citation:** *Zenda Mount Pearl Square Enterprises Limited Partnership v.  
MP TEI Realty Limited Partnership*, 2023 NLSC 82

**Date:** June 7, 2023

**Docket:** 202201G1494

**BETWEEN:**

**ZENDA MOUNT PEARL SQUARE  
ENTERPRISES LIMITED  
PARTNERSHIP**

**APPLICANT**

**AND:**

**MP TEI REALTY LIMITED  
PARTNERSHIP**

**RESPONDENT**

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**Before:** Justice Vikas Khaladkar

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**Place of Hearing:**

St. John's, Newfoundland and Labrador

**Date of Hearing:**

May 25, 2023

**Summary:**

The Application for security for costs was dismissed.

**Appearances:**

Philip J. Buckingham                      Appearing on behalf of the Applicant

Darren D. O'Keefe                         Appearing on behalf of the Respondent

**Authorities Cited:**

**RULES CONSIDERED:** *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D

**REASONS FOR JUDGMENT**

**KHALADKAR J.:**

**INTRODUCTION**

[1] The parties are co-owners in a limited partnership of a commercial property in the City of Mount Pearl, in the Province of Newfoundland and Labrador.

[2] As a result of several defalcations perpetrated by Gerald Levy, the Respondent sought an arbitration pursuant to the provision of the co-owners agreement executed by the parties in July, 2008. The Arbitrator chosen by the parties found in favour of the Applicant who, initially, sought to have the award registered in this Province. The Respondent, meanwhile, applied for a judicial review of the arbitration award.

[3] The Applicant has brought an Application for security for costs in the amount of \$8,685.50. The Respondent is opposed to the Application.

[4] Rule 21.01(f) of the *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D, allows the Court to order security for costs as follows:

(f) upon the examination of a plaintiff it appears that there is a good reason to believe that the proceeding is frivolous and vexatious, and that the plaintiff is not possessed of sufficient property within the jurisdiction to pay costs;

[5] The test is a double barreled one: the Applicant must establish to the Court's satisfaction, on a balance of probabilities, that the proceeding is without merit and that the Respondent is impecunious.

## ANALYSIS

[6] The Applicant argued that the Respondent is impecunious because it failed to pay the balance of the Arbitrator's fee in the amount of \$2,668.13. The Applicant said that the Respondent is incorporated in the Province of Quebec and is not a resident corporation of Newfoundland and Labrador. The Applicant argued, further, that the Respondent failed to file its Memorandum of Law on or before the date that it was ordered to do so.

[7] The Respondent said that the balance of the Arbitrator's fee was not paid due to an oversight but, in fact, that it has been paid. The Respondent said that it is allowed to appeal the Arbitrator's decision and has good and sufficient grounds to do so. As of the date of the hearing in this matter, the Respondent had filed its Memorandum of Law.

[8] The property owned by the parties generates substantial income and has significant value. I note that each of the parties contributed approximately \$3,500,000.00 to acquire the property. The Applicant's claim is in the order of \$1,325,000.00.

[9] I find, based upon the information that was made available to me, that the Respondent is not impecunious and has substantial assets within this jurisdiction. Accordingly, the second branch of Rule 21.01(f) has not been met. In addition, I am not prepared to hold that the Respondent's case is so weak that it borders on frivolous and vexatious. It is certainly arguable whether the defalcation by an officer appointed by both the Applicant and the Respondent should be the legal responsibility of only one of them.

[10] Under the circumstances I exercise my discretion to refrain from making an Order awarding security for costs.

[11] The Respondent shall have its costs calculated under Column III of the Schedule of Costs.

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**VIKAS KHALADKAR**  
Justice