

COURT OF APPEAL FOR ONTARIO

CITATION: Harding v. Sokil, 2020 ONCA 422

DATE: 20200629

DOCKET: M51340 (C65293)

Gillese, Brown and Paciocco JJ.A.

BETWEEN

Alexander J. Harding

Plaintiff/ Defendant by Counterclaim
(Moving Party)

and

Barbara Lynn Sokil

Defendant/ Plaintiff by Counterclaim
(Responding Party)

and

Alexander James Harding, Estate of Irene Francis Harding and
Sharron Lynn-Duns

Defendants to Counterclaim

William R. Gilmour, for the moving party

Babara Lynn Sokil, acting in person

Heard: in writing

REASONS FOR DECISION

[1] This is a motion to dismiss the within appeal or, alternatively, require the appellant to post security for costs as a condition of continuing it (the “Motion”).

BACKGROUND IN BRIEF

[2] Alexander James Harding granted a vendor take back mortgage to Barbara Lynn Sokil when she purchased real property from him. Ms. Sokil defaulted on her obligations under the mortgage and Mr. Harding sued her for damages, interest, costs and possession of the property. Ms. Sokil filed a defence and counterclaim.

[3] Mr. Harding moved for summary judgment. The motion judge found there were no genuine issues requiring a trial in the action or counterclaim and, by judgment dated March 19, 2018 (the “Judgment”), he ordered the relief that Mr. Harding sought – including a Writ of Possession – and dismissed the counterclaim.

[4] Ms. Sokil filed a notice of appeal in this court. She then brought a motion to stay the Judgment pending appeal (the “Stay Motion”).

[5] Justice Trotter heard the Stay Motion on May 1, 2018, and dismissed it. In his affidavit in support of this Motion, Mr. Harding attests that when Trotter J.A. was receiving costs submissions on the Stay Motion, Ms. Sokil indicated that “it didn’t matter what costs were ordered – she was not going to pay them”. Ms. Sokil takes no issue with this claim in her Motion material.

[6] Justice Trotter ordered Ms. Sokil to pay Mr. Harding costs of \$2,000 (all inclusive), such costs to be paid within sixty days (the “Costs Order”). In his endorsement, Trotter J.A. opines that the appeal “has no merit”.

[7] The appeal was set down to be heard on April 19, 2019. Ms. Sokil failed to appear for the hearing, without notice to Mr. Harding. She seeks to have the appeal re-listed for a hearing.

[8] It has been over a year since the Costs Order was made and Mr. Harding has not yet received payment of the costs. He brings this Motion in which he asks that Ms. Sokil’s appeal be dismissed for failure to pay the Costs Order and because, he alleges, Ms. Sokil’s conduct of the appeal to date has been “frivolous and vexatious”. Alternatively, Mr. Harding asks that Ms. Sokil be required to post security for costs as a condition of continuing with her appeal.

[9] The Motion was scheduled to be heard, in writing, on June 22, 2020.

[10] Ms. Sokil asks that the hearing of the Motion be adjourned. She also filed an affidavit replying to the Motion. In her affidavit, she takes issue with Trotter J.A. having expressed his opinion that the appeal had no merit, with the way in which the Motion had been brought and conducted, and with other aspects of Mr. Harding and his counsel’s conduct during the appeal proceeding. She asks that the Motion be dismissed.

ANALYSIS

[11] We deal first with Ms. Sokil's request for an adjournment. The Motion was scheduled to be heard in writing on June 22, 2020. We have received all the documents necessary to fairly hear, consider and decide the Motion. In the circumstances, we see no basis for adjourning it. Accordingly, we reject the adjournment request.

[12] In terms of the Motion, assuming that this court has the power to dismiss an appeal for failure to pay costs orders, we would not exercise that power in this case: Ms. Sokil has failed to pay only one costs order.

[13] However, rule 61.06(1)(b) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, empowers the court to order security for costs of the proceeding and the appeal if an order for security for costs could be made against the appellant under rule 56.01. Rule 56.01(1)(c) authorizes an order for security for costs where the respondent has an order for costs against the appellant that remains unpaid. That is the situation here. Under the Costs Order, Ms. Sokil was to have paid Mr. Harding \$2,000 over a year ago. That she has not done.

[14] Ordering Ms. Sokil to pay security for costs would be just in the circumstances of this appeal: *York University v. Markicevic*, 2017 ONCA 651, at para. 22; *Yaiguaje v. Chevron Corporation*, 2017 ONCA 827, 138 O.R. (3d) 1, at para. 23. Not only has Ms. Sokil failed to pay the costs ordered by Trotter J.A., she

said she would defy that costs order. Ms. Sokil has not prosecuted her appeal with diligence. As well, the merits of her appeal are very weak.

[15] Accordingly, we will make an order that Ms. Sokil pay security for costs of the proceeding and the appeal. In quantifying the amount of security required, we bear in mind that costs of \$5,650 and \$2,675, respectively, were ordered against Ms. Sokil on the Summary Judgment motion and the dismissal of her counterclaim. We also bear in mind that Mr. Harding has estimated his costs of the appeal (to April 10, 2019) at \$11,000.

DISPOSITION

[16] Accordingly, the Motion is granted with costs to Mr. Harding of \$3,000, all inclusive. Ms. Sokil is ordered to pay these costs plus the Costs Order of \$2,000 to counsel for Mr. Harding within thirty (30) days of the date of release of these reasons.

[17] Ms. Sokil is further ordered to pay into court, as security for costs for the proceeding and the appeal, the amount of \$19,000. Such payment shall be received by the court within forty-five (45) days of the date of release of these reasons. Until the security has been received by this court, Ms. Sokil may take no further steps in this proceeding.

[18] If Ms. Sokil fails to pay the costs of this Motion (\$3,000) and the Costs Order (\$2,000) to Mr. Harding's counsel within the stipulated time, or if she fails to comply

with the security for costs order, the appeal shall be dismissed on motion by Mr. Harding.

“E.E. Gillese J.A.”

“David Brown J.A.”

“David M. Paciocco J.A.”