

COURT OF APPEAL FOR ONTARIO

CITATION: Allen v. Kumar, 2024 ONCA 470

DATE: 20240614

DOCKET: M54954 (COA-23-OM-0310)

MacPherson, Paciocco and Wilson JJ.A.

BETWEEN

Terry Allen, Irene Allen,
Christopher Robinson, Crystal Robinson,
Sean Deline, Kristy Elik, Max Careau, and
Robin Kumar

Plaintiffs
(Respondents/Responding Parties)

and

Brian Anish Kumar*,
John Doe, Jane Doe and Doe Corporations

Defendants
(Appellant/Moving Party*)

Brian Anish Kumar, acting in person

Norman Groot and Ashley Ferguson, for the respondents/responding parties

Heard: in writing

REASONS FOR DECISION

[1] The moving party/appellant Brian Kumar seeks to review the decision of Coroza J.A. dated March 13, 2024 pursuant to s. 7(5) of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43. In that decision, Coroza J.A. ordered the moving party to post security for costs in the amount of \$5,000 before proceeding further with his motion for leave to appeal a decision of Nishikawa J. of the Divisional Court to this court.

[2] By way of background, the respondents (plaintiffs below) allege that they transferred \$644,000 to the moving party based on representations he made to them about various investments. The representations were false and the respondents commenced an action in fraud and breach of fiduciary duty.

[3] The respondents moved to strike Mr. Kumar's statement of defence. Associate Justice Robinson found that Mr. Kumar had not provided sufficient financial transparency and failed to comply with several court orders. Accordingly, he struck out Mr. Kumar's statement of defence.

[4] Mr. Kumar appealed this decision to the Divisional Court. Nishikawa J. dismissed the appeal.

[5] Mr. Kumar brought a motion for leave to appeal the Divisional Court's decision. The respondents replied by bringing a motion for security for costs. Coroza J.A. granted this motion and ordered Mr. Kumar to post security for costs in the amount of \$5,000.

[6] Mr. Kumar advances three arguments on his leave motion:

- (1) the motion judge ignored evidence and the law of delay by the Moving Party;
- (2) the motion judge ignored key evidence causing misapplication of Rule 61.06 (1)(c) of the *Rules of Civil Procedure*; and
- (3) the motion judge decided what the panel would have decided, which is contrary to the law of this court.

[7] We do not accept these arguments. We agree completely with Coroza J.A.'s reasoning and conclusions. In particular, we agree with these two paragraphs from Coroza J.A.'s reasons:

Considered together, the strength of Nishikawa J.'s reasons, the weakness of the responding party's arguments, and the responding party's continuous non-compliance with court orders weigh in favour of ordering security for costs.

...

I am satisfied that it is in the interests of justice to order security for costs in the appeal in the amount of \$5,000. Mr. Kumar has shown a consistent pattern of non-compliance with court orders, including a *Mareva* order in place for nearly five years. He has not presented any visible justification for his continued non-compliance.

[8] The motion is dismissed. The respondents are entitled to their costs of the motion fixed at \$5,000, inclusive of disbursements and HST.

“J.C. MacPherson J.A.”
“David M. Paciocco J.A.”
“D.A. Wilson J.A.”