COURT FILE NO.: CV-23-00000329-0000

SUPERIOR COURT OF JUSTICE – ONTARIO

7755 Hurontario Street, Brampton ON L6W 4T6

RE:	GUANGDONG MAXOME INDUSTRIAL LIMITED, plaintiff
	AND:
	SANTE MANUFACTURING INC, defendant
BEFORE:	Justice J. K. Trimble
COUNSEL:	STARKMAN, PAUL, for the plaintiff paul@starkmanlawyers.com
	GOLD, AARON, for the defendant agold@babinbessnerspry.com
HEARD:	August 27, 2025, by video conference

ENDORSEMENT

THE MOTION

[1] The Defendant moves for security for costs of $150,000.00 on the basis that the Plaintiff agreed that because it is a non-resident corporation, the Defendant is entitled to security for costs, and $150,000 is a reasonable amount.

[2] The Plaintiff says that it did not concede entitlement. It merely conceded that it was a non resident corporation, thereby triggering the discussion at the second phase of the security for costs analysis. It also argue that no security for costs should be posted, and if so, only approximately $10,000.00 for the Plaintiffs' anticipated Summary Judgment Motion.

PRELIMINARY ISSUE

[3] The Defendant raised a preliminary issue of whether the Plaintiff conceded that the only issue to be decided on this motion is quantum (i.e. that it conceded the Defendants entitlement to the order), and if so, ought it to be entitled to resile from that position stated for the first time in its factum filed on the motion.

[4] The Defendant argued that the answers should be yes and no, in that order. The Plaintiff only argued that it made no concession.

[5] I ruled orally that for reasons to follow the Plaintiff agreed that the Defendants were entitled to an order for security for costs, leaving the only amount in question.

[6] In his email 26 February 2025, Plaintiff counsel said:

> We acknowledged last week that our client is non-resident and therefore comes within Rule 56.01(1)(a) and the only issue to be argued on the security for costs motion is quantum.

[7] Counsel for the Plaintiff confirmed this again by email on 28 February 2025.

[8] The admission is clear. In reliance on this admission, the Defendant did not file reply evidence and did not cross examine Plaintiff. Relying on *Greenpeace Canada v. Minister of the Environment (Ontario)*, 2019 ONSC 5629 at para 104, the Plaintiff should not be able to resile from this admission.

SECURITY FOR COSTS

The Law

[9] The parties agree on the applicable law which I set out in *Air Palace v. Abdel*, 2021 ONSC 7882.

[10] Rule 56.01(1) provides that the court, on motion by the Defendant at any time after it defends, may make such order for security for costs as is just where it appears that any of the criteria in that Rule are met. It provides:

> 56.01 (1) The court, on motion by the Defendant or respondent in a proceeding, may make such order for security for costs as is just where it appears that,
>
> (a) the plaintiff or applicant is ordinarily resident outside Ontario;
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> (b) the plaintiff or applicant has another proceeding for the same relief pending in Ontario or elsewhere;
>
> (c) the Defendant or respondent has an order against the plaintiff or applicant for costs in the same or another proceeding that remain unpaid in whole or in part;
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> (d) the plaintiff or applicant is a corporation or a nominal plaintiff or applicant, and there is good reason to believe that the plaintiff or applicant has insufficient assets in Ontario to pay the costs of the Defendant or respondent;
>
> (e) there is good reason to believe that the action or application is frivolous and vexatious and that the plaintiff or applicant has insufficient assets in Ontario to pay the costs of the Defendant or respondent; or
>
> (f) a statute entitles the Defendant or respondent to security for costs.

[11] Under R. 56.04, "the amount and form of security and the time for paying into court or otherwise giving the required security shall be determined by the court."

[12] There are three phases to a motion for security for costs.

[13] First, the Defendant must prove that the Plaintiff meets one of the criteria in Rule 56.01(1). That does not give the Defendant a *prima facie* right to security for costs; rather, it triggers an inquiry in which the court, using its broad discretion, may make such order as is just in the circumstances (see: *Stojanovic v. Bulut*, 2011 ONSC 874, at paras. 4-5; and *Lipson v. Lipson*, 2020 ONSC 1324, at para. 26).

[14] The Courts have put forth a number of factors and principles to consider. However, the analysis remains holistic, focussed on the justness of the order in all

the circumstances. The Court of Appeal, in *Yaiguaje v. Chevron Corp*., 2017 ONCA 827, at paras. 23-25, said:

> [23] The Rules explicitly provide that an order for security for costs should only be made where the justness of the case demands it. Courts must be vigilant to ensure an order that is designed to be protective in nature is not used as a litigation tactic to prevent a case from being heard on its merits, even in circumstances where the other provisions of rr. 56 or 61 have been met.
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> [24] Courts in Ontario have attempted to articulate the factors to be considered in determining the justness of security for costs orders. They have identified such factors as the merits of the claim, delay in bringing the motion, the impact of actionable conduct by the Defendants on the available assets of the Plaintiffs, access to justice concerns, and the public importance of the litigation…
>
> [25] While this case law is of some assistance, each case must be considered on its own facts. It is neither helpful nor just to compose a static list of factors to be used in all cases in determining the justness of a security for costs order. There is no utility in imposing rigid criteria on top of the criteria already provided for in the Rules. The correct approach is for the court to consider the justness of the order holistically, examining all of the circumstances of the case and guided by the overriding interest of justice to determine whether it is just that the order be made.

[15] The leading case on security for costs is Master (as he was then known) Glustein's in *Coastline Corporation Ltd. et al v. Cannacord Capital Corporation et al*, 2009 CanLII 21758 (S.C.J.), upon which I have updated and expanded.

[16] The test for the Defendant at this first stage is not a high one. The onus is to show that the Plaintiff "appears to" fall within one of the four enumerated categories in Rule 56.01.

[17] In the second phase, the onus shifts to the Plaintiff to avoid an order for security for costs by showing that they have sufficient assets in Ontario or a reciprocating jurisdiction to satisfy a costs order, the order is unjust or unnecessary, or the Plaintiff should be permitted to continue with action despite their impecuniosity

(see: *Hallum v. Canadian Memorial Chiropractic College* (1989), 1989 CanLII 4354 (ON SC), 70 O.R. (2d) 119 (H.C.J.) at 123); and *Lipson v. Lipson*, 2020 ONSC 1324 supra, at para. 28, and *Uribe v. Sanchez* (2006), 33 C.P.C. (6th) 94 (Ont. S.C.J. – Master) at para. 4);

[18] The second stage of the test is permissive and requires the exercise of discretion which can consider a number of factors. The court exercises a broad discretion in making an order that is "just" (see: *Chachula v. Baillie* (2004), 69 O.R. (3d) 175 (S.C.J.) at para. 12, and *Uribe,* at para. 4);

[19] The plaintiff can meet its onus by either demonstrating that:

a. the plaintiff has appropriate or sufficient assets in Ontario or in a reciprocating jurisdiction to satisfy any order of costs made in the litigation,

b. the plaintiff is impecunious, and that justice demands that the plaintiff be permitted to continue with the action, i.e. an impecunious plaintiff will generally avoid paying security for costs if the plaintiff can establish that the claim is not "plainly devoid of merit", or

c. if the plaintiff cannot establish that it is impecunious, but the plaintiff does not have sufficient assets to meet a costs order, the plaintiff must meet a high threshold to satisfy the court of its chances of success. see: *Willets v. Colalillo,* [2007] O.J. No. 4623 (S.C.J. – Mast.) at paras. 46, 47, and 55; *Uribe*, at para. 5; *Zeitoun v. Economical Insurance Group* (2008), 91 O.R. (3d) 131 (Div. Ct.) at para. 50; *Bruno Appliance and Furniture Inc. v. Cassels Brock & Blackwell LLP*, [2007] O.J. No. 4096 (S.C.J. – Mast.) at para. 35).

d. The court s not required to embark on the same sort of analysis as on a motion for summary judgment. The analysis is done primarily on the pleadings, with recourse to evidence filed on the motion, and in appropriate cases, to selective references to excerpts of the examination for discovery where it is available (*Padnos*, at para. 7, and *Bruno*, at para. 37).

e. If the case is complex or turns on credibility it is generally not appropriate to make an assessment of the merits at the interlocutory stage. The

assessment of the merits should be decisive only where the merits may be properly assessed on an interlocutory application (see: *Wall v. Horn Abbott Ltd.,* 1999 CanLII 7240 (NS CA), [1999] N.S.J. No. 124 (C.A.) at para. 83);

f. A corporate plaintiff who claims impecuniosity must demonstrate that it is genuinely impecunious (see: *Montrose Hammond & Co. v. CIBC World Markets Inc.,* 2012 ONSC 4869, at para. 34) and cannot raise security for costs from its shareholders and associates; that is, it must demonstrate that its principals do not have sufficient assets (see: *Smith Bus Lines Ltd. v. Bank of Montreal* (1987), 61 O.R. (2d) 688 (H.C.J.) at para. 705). Evidence as to the "personal means" of the principals of the corporation is required to meet this onus (see: *Treasure Traders International Co. v. Canadian Diamond Traders Inc.*, [2006] O.J. No. 1866 (S.C.J.) at paras. 8-11). A corporate plaintiff must provide substantial evidence about the ability of its shareholders or others with an interest in the litigation to post security. A bare assertion that no funds are available will not suffice (see: *1493677 Ontario Ltd. v. Crain, [*2008] O.J. No. 3236 (S.C.J. – Master) at para. 19). A security for costs motion requires a "rigorous standard" of financial disclosure (see: *Lipsson,* at para. 33);

g. The Plaintiff's financial disclosure obligation requires "robust particularity", including the amount and source of all income, a description of all assets, including values, a list of all liabilities and other significant expenses, an indication of the extent of the ability of the Plaintiff to borrow funds, and details of any assets disposed of or encumbered since the cause of action arose (see: *Al Masri v. Baberakubona*, 2010 ONSC 562, at para. 19, citing *Morton v. Canada*, 2005 CanLII 6052 (ONSC), at para. 32);

h. The evidentiary threshold is high. The Plaintiff must tender "complete and accurate disclosure of the Plaintiff's income, assets, expenses, liabilities and borrowing ability, with full supporting documentation for each category where available or an explanation where not available" (see: *Shuter v. Toronto Dominion Bank,* 2007 CanLII 37475 (ON SC) at para. 76);

i. The merits of the case have a role in any application under Rule 56.01, but on a continuum. Where the motion based on R. 56.01(1)(a), the merits of the case are at the low end. Where the motion is based on R. 56.01(e), the merits of the case are at the high end (*Padnos* at para. 4 and *Bruno* at para. 36);

j. If a Plaintiff demonstrates impecuniosity, he can resist the motion for security for costs by showing that the claim is not plainly devoid of merit. If the Plaintiff does not establish impecuniosity, the Plaintiff must meet a higher standard, namely that the case has a good chance of success (see: *Michailidis v. Vertes*, 2019 ONSC 6440, at para. 6, and *Zeitoun* at paras. 49-50).

[20] In the third phase, the court must set the quantum of security that is just in the circumstances.

Application

[21] In this case, the Defendant asks for $150,000 in security for costs. It says that the action, $600,000 USD (approx.. $850,000 CDN) is complex. The Defendant has incurred almost $20,000 in fees to date, and expects that its legal fees will exceed $370,000.

[22] The Plaintiff argues that the action involved a dispute involving the express or implied terms of their "business arrangement" going back years, including the acceptance of purchase orders, procurement, shipment and delivery, which must be seen in light of the parties' established business practices. Documentary productions will be expansive, time-consuming, and costly, covering the parties' entire seven-year-long business relationship.

[23] Further, China (the domicile of the Plaintiff) does not have reciprocal enforcement arrangements with Canadian Judgments.

[24] The Plaintiff proposes payments in the following tranches:

a. Tranche One: $50,000 within 30 days of the court's decision on this motion, representing $30,000 for the costs of this moitonSummary Judgment motion, and the Plaintiff's actual fees incurred to date of $19,880, excluding the costs of this motion;

b. Tranche Two: $30,000 to be posted 60 days before examinations for discovery;

c. Tranche Three: $30,000 to be posted 60 days before the pre-trial conference; and

d. Tranche Four: $40,000 to be posted 180 days before trial.

[25] The Defendant does not have a tranche specifically related to the Plaintiff's proposed Summary Judgment Motion.

[26] Most of the Plaintiff's arguments addressed entitlement to the Order, not quantum. Others addressed quantum too, such as the quantum of the order should be lower since the Defendant has not paid for at least one order valued at $126,000 USD. If the Plaintiff is successful in proving that the Defendant breached the contract, the Defendant will have been found to have kept the Plaintiff's property inappropriately. Further, the Security for Costs motion should be seen in context, that is as a procedural/tactical wrench thrown in to delay or frustrate the Plaintiff's Motion for Summary Judgment.

[27] In this case, the Plaintiff is a company, domiciled in China, which has no reciprocal enforcement arrangement with Canada. I cannot assess the merits of the Plaintiff's case as it depends a great deal on credibility. I accept, however, that the Defendant took delivery of an order from the Plaintiff worth $126,000 and did not pay for it. I am also cognizant of the fact that any order for security for costs should be protective of the Canadian based Defendant, and not be used as a litigation tactic to prevent a case from being heard on its merits (see: *China Yantai Friction Co. Ltd. v. Novalex Inc.*, 2021 ONSC 3571).

[28] In the end, I order no security for costs. Given that the Defendant has taken delivery of $126,000 USD of the Plaintiff's goods and not paid for them, it has security enough.

[29] The motion is dismissed.

COSTS

[30] The parties advised that because of offers made on the motion, they could not address costs until this decision was released.

[31] Accordingly, I will decide who pays whom costs and in what amount based on written submissions not to exceed 3 double-spaced pages (excluding offers and Bills of Costs). The Plaintiff's submissions shall be served and filed by 4 pm, 17 December 2025, and the Defendants by 4 pm, 7 January 2026.

Jamie Trimble

Digitally signed by Jamie Trimble
Date: 2025.11.26 10:51:41 -05'00'

Trimble, J.