

CITATION: Davis v. Goosens, 2025 ONSC 3944
COURT FILE NO.: CV-22-00685181-0000
DATE: 20250702

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
JOHN DAVIS) *Christopher Yung and Jonathan Mertz for the*
Plaintiff) plaintiff
)
– and –)
)
DAVE GOOSENS, MEDQUEST) *Garth B. Dingwall and Murtaza Yailaqi for*
MEDICAL INC., MARIO CORTIS and) the defendants Mario Cortis and MediHub
MEDIHUB INTERNATIONAL INC.) International Inc.
)
Defendants) *Rohit R. Kumar for the defendants Dave*
) Goosens and MedQuest Medical Inc.
)
)
)
) **HEARD:** June 9, 2025

2025 ONSC 3944 (CanLII)

ENDORSEMENT

PAPAGEORGIU J.

Overview

[1] The defendants Mario Cortis (“Mr. Cortis”) and MediHub International Inc. (“MediHub”) (collectively the “Cortis Parties”) seek security for costs in the amount of \$500,000.

Decision

[2] For the reasons that follow, I grant the motion and award security for costs in the amount of \$80,000 but stay the order for 90 days as there is evidence before me filed a mere days before the motion that Mr. Davis may be returning to Ontario imminently. I see no utility in either adjourning the motion to determine where he ends up and then requiring the parties to obtain another date and then return or in making an order that is immediately in force only to have the parties return with a motion to set it aside.

Issues

- Issue 1: Have the defendants demonstrated that Mr. Davis is ordinarily resident outside Ontario? As part of this analysis, should the court grant leave to Mr. Davis to file supplementary affidavits after cross-examination?
- Issue 2: Has the plaintiff demonstrated that an order for security for costs would be unjust?

Analysis

Background and Nature of the Case

[3] The dispute herein involves a claim by Mr. Davis for commission sales on Personal Protective Equipment (“PPE”) to the Canadian market.

[4] Mr. Davis says that he is owed \$8,000,000 in commission from all defendants.

[5] Mr. Cortis and Dave Goosens (“Mr. Goosens”) were entrepreneurs in the medical products field. They were sole directors of the defendants, MediHub and MedQuest Medical Inc. (“MedQuest”), respectively.

[6] Mr. Davis says that in February 2020 they engaged him as a business advisor to their jointly owned company, Panther Medical Canada Inc. (“Panther Canada”). His role was to provide strategic advice and direction to the company and identify and recruit strategic partners in the medical devices industry.

[7] He says that when COVID-19 hit, they saw a business opportunity to supply PPE to Canadian and American markets and that together with MedQuest and MediHub, they would source and supply it and split the profits 50/50.

[8] Mr. Davis says that in furtherance of their business venture, they enrolled all their staff including Mr. Davis as sales staff.

[9] The defendants, Mr. Cortis and MediHub, tell a different story.

[10] They say that when COVID-19 hit, MediHub attempted to become a supplier of PPE to the Canadian market.

[11] However, after exploring opportunities, they realized that MediHub lacked the capital and warehouse infrastructure in Canada to execute, materialize, and scale MediHub’s sourcing opportunities.

[12] Accordingly, after discussions with Mr. Goosens, Mr. Cortis decided to forego the opportunity for MediHub to supply the MediHub PPE to North America, but that it would take on the role of sourcing and operationalizing PPE supplies to MedQuest. Thus, the Cortis Parties agreed to act as a service provider to MedQuest over the next several weeks for which it was ultimately agreed that they would receive a one-time payment of \$100,000 for MediHub's role in their collaboration.

[13] Mr. Cortis says he advised his business contacts, including Mr. Davis, that MediHub had dropped its plan to sell PPE and that he should deal with MedQuest and Mr. Goosens.

[14] Mr. Cortis says that Mr. Davis then began dealing with Mr. Goosens and MedQuest.

[15] Mr. Davis had sold \$40,000,000 in PPE and was not paid any commissions.

[16] Mr. Davis then commenced this proceeding against all these defendants.

[17] The Cortis Parties say that although they did deal with Mr. Davis initially, this was in the period when they were considering becoming involved as a seller, and that Mr. Davis was aware that after these conversations, the Cortis Parties were no longer involved as sellers of PPE.

[18] The Cortis Parties position is that Mr. Davis and the MedQuest Parties entered into a contract and that the Cortis Parties were not privy to their arrangements.

[19] They say that they have shown that they only received a one-time \$100,000 payment from MedQuest as a service provider for the period from March to April 23, 2020. They have not been entitled to, nor did they receive any share of the profit or revenues for the sale of MedQuest PPE.

Issue 1: Have the defendants demonstrated that Mr. Davis is ordinarily resident outside Ontario? As part of this analysis, should the court grant leave to Mr. Davis to file supplementary affidavits after cross-examination?

[20] The relevant parts of r. 56.01(1) for the purposes of this motion are:

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.

[21] The threshold for making this determination pursuant to the caselaw is that the defendant must satisfy the court that it "appears" that there is good reason to believe that the matter comes within one of the enumerated grounds in r. 56. The threshold is not high. It requires proof only that there is more than conjecture, hunch, or speculation: *Coastline Corp. v. Canaccord Capital Corp.* ("Coastline"), 2009 O.J. No. 1790 (ONSC) at para 7 and *see Jian v. Xu*, 2024 ONSC 7242 at para 12 citing *Coastline*. See also: (i) *Novak v. St. Demetrius (Ukrainian Catholic) Development Corporation*, 2018 ONCA 219 (CanLII) at para 7; and (ii) *Baca v. Tatarinov*, 2018 ONSC 1307

(CanLII); and (iii) *Canadian Metal Buildings Inc. v. 1467344 Ontario Limited*, 2019 ONSC 566 (CanLII) at para 11; *Cobalt Engineering v. Genivar Inc.*, 2011 ONSC 4929 (CanLII) at para 9; 3 *Dogs Daycare Inc. v. Dogtopia Enterprises Canada Inc. (“3 Dogs Daycare”)* 2024 ONSC 3182 (CanLII) at para 15.

[22] Mr. Davis had previously ordinarily resided in Ontario. Two of his daughters live in Peterborough. His mother lives in Markdale and his sister lives in Erin. His nieces and nephews also live in Ontario. His fiancée lives in Etobicoke where she works as a high school teacher.

[23] Mr. Davis had moved away in July 2023, two months after the commencement of discoveries, to New Jersey where he serves as the President of Panther Healthcare USA (“Panther USA”). As a Canadian citizen, he obtained a “TN” visa to allow him to work and reside in the United States of America (“United States”). It was to expire in May 2026.

[24] In response to the Cortis’ parties’ inquiry on January 26, 2024 Mr. Davis’s counsel confirmed that he no longer ordinarily resided in Ontario.

[25] This response would satisfy the test.

The New Evidence Post Cross-Examination

[26] Cross-examination of Mr. Cortis on his affidavit occurred on March 3, 2025. There was no cross-examination of Mr. Davis.

[27] After the cross-examination of Mr. Cortis, and shortly before the hearing, Mr. Davis then submitted two supplementary affidavits dated June 2 and June 5, 2025. These affidavits set out that he had lost his job with Panther USA due to a restructuring. This is supported by a notice from Panther USA dated May 6, 2025. He says pursuant to his TN visa, he must move back to Canada within 60 days from the end of his employment and that once he leaves the United States, he can no longer rely on this TN visa.

[28] He indicated that he was exploring jobs in the United States and Canada but if he obtains a job in the United States, he must obtain a new TN visa. He has terminated his lease and will have no residence in the United States at the end of June.

[29] His present intention is to return to Canada on June 28, 2025 where he will live with his fiancée.

[30] The Cortis Parties object to the admission of this affidavit.

[31] I apply the test set out in *1944949 Ontario Inc v. 251300 Ontario Ltd*, 2019 ONCA 628 at para 34.

Is the evidence relevant?

[32] Clearly the affidavits are somewhat relevant as they address the central issue in this proceeding which is Mr. Davis's residency. However, they are not determinative because all they do is set out his plans which include staying in the United States if he can find a job.

Would granting leave to file the evidence result in non-compensable prejudice that could not be addressed by imposing costs, terms, or an adjournment?

[33] There is no evidence or even argument made that it would. I asked if the Cortis Parties wanted an adjournment if the affidavits were admitted and they did not.

Did the moving party provide a reasonable or adequate explanation for why the evidence was not included at the outset?

[34] Yes. The explanation is that these affidavits reflect a change in circumstances that he could not have known about.

Does the evidence respond to a matter first raised on cross examination, not necessarily raised for the first time?

[35] This is the crux of the matter.

[36] Mr. Cortis interprets this to mean that the affidavit cannot be admitted because the contents of the affidavit do not, strictly speaking, relate to anything raised on Mr. Cortis' cross-examination. While Mr. Cortis was asked about when he learned about Mr. Davis's residency, he gave no evidence on Mr. Davis's future plans. Of course, he would not have been asked any such questions since he would not know.

[37] In *First Capital Inc. v. Centrecorp Management Services Ltd.*, 2009 CarswellOnt 6914, at para 16, the Divisional Court directed that r. 39.02 was to be applied with a "flexible, contextual approach.": para 16. Here, the information was not available and even if it was, it was not information that the Cortis Parties would have known when they were cross-examined. Mr. Davis was not cross-examined.

[38] I add that when one looks at the actual text of r. 39.02, it does not remove the court's inherent discretion to admit evidence. This is what it says specifically:

(2) A party who has cross-examined on an affidavit delivered by an adverse party shall not subsequently deliver an affidavit for use at the hearing or conduct an examination under rule 39.03 without leave or consent, and the court shall grant leave, on such terms as are just, where it is satisfied that the party ought to be permitted to respond to any matter raised on the cross-examination with evidence in the form of an affidavit or a transcript of an examination conducted under rule 39.03. R.R.O. 1990, Reg. 194, r. 39.02 (2).

[39] The Cortis Parties are reading this section as if it says no affidavits shall be admitted unless it responds to a matter first raised on cross-examination. But that is not what it says. It says that subsequent affidavits require leave for admission and then it directs that the court shall grant leave if the affidavit responds to a matter first raised on cross-examination. This is a mandatory direction in that specific situation but does not go further and direct that there is no other basis for the court to exercise its inherent jurisdiction to grant leave to admit relevant evidence where appropriate. In my view, the situation where there is new relevant information that was not available before, or a change in circumstances, is the kind of situation where a court could exercise its discretion even if the issue did not technically arise out of information obtained on cross-examination.

[40] It would be absurd and a waste of judicial resources court time, and the parties' own costs, if Mr. Davis had actually moved back and was employed in Ontario for this court to reject such an affidavit on the basis that he could later move to set aside an order for security for costs if granted.

[41] He does not say that, however. He simply says he may be moving back. I exercise my discretion to admit these affidavits because they are relevant to the terms of my order granting an order for security for costs.

[42] In that regard, as will be seen, I am ordering security for costs in the amount of \$80,000. I am staying the order for 90 days so that next steps can be addressed if he does in fact move back.

Issue 2: Has the plaintiff demonstrated that an order for security for costs would be unjust?

[43] Once the first part of the test has been satisfied, the onus shifts to the plaintiff to establish that an order for security for costs would be unjust: *3 Dogs Daycare* at para 14 citing *Coastline* at para 7.

[44] The second stage is discretionary: *3 Dog Daycare* at para 14.

[45] Most of the caselaw before me sets out that the plaintiff can meet the onus by:

- The plaintiff has appropriate or sufficient assets in Ontario or in a reciprocating jurisdiction to satisfy any order of costs made in the litigation.
- The plaintiff is impecunious and 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
- If the plaintiff cannot establish that it is impecunious, but the plaintiff does not have sufficient assets to meet a costs order, the plaintiff meet a high threshold to satisfy the court of its chances of success: *Surefire Dividend Capture, LP v. National Liability & Fire Insurance Company (“Surefire”)*, 2022 ONSC 5516 (CanLII) at para 13 and citing *Coastline* at para 7. I will address the change in the law that Mr. Davis urges in the section on this issue.

- However, if the case is complex or turns on credibility, it is generally not appropriate to make an assessment of the merits at the interlocutory state. The assessment of the merits should be decisive only where: (a) the merits may be properly assessed on an interlocutory application; and (b) success or failure appears obvious: *Canadian Metal Buildings Inc. v. 1467344 Ontario Limited, Operating as SEC & CO*, 2019 ONSC 566 at para 13 citing Master Glustein in *Coastline* at para 7.

[46] In *Yaiguaje v. Chevron*, 2017 ONCA 827 at para 25 (“*Chevron*”), the court indicated a shift in the way in which courts should approach security for costs motions. That case involved a motion by Chevron relying upon r. 61.06 and r. 56. Therefore, the court’s comments applied to both motions for security for costs pursuant to both rules.

[47] It reviewed the fact that courts in Ontario had tried to articulate factors that should be considered such as the merits, delay, access to justice concerns, and the importance of the litigation: para 24. (I note here that many of the cases cited dealt with motions for security for costs pursuant to r. 56.)

[48] It directed that while having a list of specific factors for guidance is of assistance, “each case must be considered on its own facts.”: para 25. Courts should not apply “static list of factors to be used in all cases in determining the justness of a security for costs order.”

[49] Rather, “[i]n deciding motions for security for costs judges are obliged to first consider the specific provisions of the Rules governing those motions and then effectively to take a step back and consider the justness of the order sought in the circumstances of the case, with the interests of justice at the forefront.”: para 22. The court should consider the case “holistically” and examine all relevant circumstances to consider the justness of the order sought: para 25.

[50] It emphasized that courts should be particularly concerned that such motions are not brought for tactical reasons. Rather the order is supposed to be protective in nature.

[51] It reiterated this approach in *Foodinvest Limited v. Royal Bank of Canada*, 2020 ONCA 387 (“*Foodinvest*”).

[52] With that approach in mind, and in particular, to assess the overall justness of the order sought, I consider and weigh various factors.

Insufficient Assets in Ontario

[53] In *Surfire Dividend Capture, LP v. National Liability & Fire Insurance Company*, 2022 ONSC 5516 at para 16, the court held that a plaintiff’s financial disclosure of assets requires “robust particularity.”

[54] Mr. Davis disclosed that he has the following assets in Ontario: a) a TD Canada Trust business chequing account for 2784614 Ontario Inc. showing a closing balance of \$1,724 as of February 28, 2025; and b) a TD Canada Trust bank account for “John Oswald Davis” showing a

closing balance on February 28, 2025 of \$3,596. He also says that MedQuest Parties have agreed to pay him \$216,000 in commissions and that he will place these funds in his Ontario bank account.

[55] The Cortis Parties argue that this is insufficient because he has not agreed to place these funds in escrow and even if he did deposit the \$216,000 into his account, he could remove the funds at anytime. There is caselaw where courts have given little weight to bank accounts as being appropriate assets in a security for costs motion as they are extremely liquid: *Unionville Education Inc. v. Song*, 2024 ONSC 1243 (CanLII) at para 5. See also, *Galileo Canada Distribution Systems Inc. v. Asian Travel Alliance Inc.* 2005 CanLII 51352 (ON SC) at para 11. See also *Tiberian Investment Ltd. v. 297518 Ontario Limited*, 2018 ONSC 6253 (Can LII) at para 13. See also *Boudreau v. TMS Lighting Ltd.*, 2017 ONSC 6188 (CanLII) at para 21 dealing with the consideration of an RRSP account.

[56] Mr. Davis also references his potential recoveries in this litigation as against Medquest. Courts have held that any interest in the potential fruits of litigation and their availability must be established with a degree of certainty required at summary judgment: *Rayman Tiger Inc. v. Unger Tiger Inc.*, 2020 ONSC 691 (CanLII) at paras 17 to 23; and *Ensign Group Inc. v. Saine Estate*, 2005 CanLII 24747 (ON SC) at para 11.

[57] The Medquest parties have vigorously denied liability and there is no such degree of certainty here. There is also no comfort that the MedQuest parties would pay any judgment.

Impecuniosity

[58] Although Mr. Davis claims that this motion is being brought as a tactical measure to deter him from this proceeding and/or put him at risk of being unable to comply, Mr. Davis has not claimed any impecuniosity. Indeed, he has the funds from Medquest referenced above and up until recently he was employed.

The Claim's Chance of Success

[59] The bulk of the caselaw provides that if Mr. Davis cannot show he is impecunious, to satisfy the onus on him, he must show that his claim has a “good chance of success or a real possibility of success.” *3 Dogs Daycare* at para 25.

[60] In *Chevron* at para 25, a single judge of the Court of Appeal had made an order for security for costs. The appellants did not satisfy her as to impecuniosity. Thus, the motion judge applied the above test and required the plaintiffs to show that their claim had a good chance of success. She concluded that the plaintiffs had not met that test and then made an order for security for costs.

[61] The Court of Appeal panel determined that the order should not have been made. When it applied the test in that case, with respect to the merits, it stated “[i]t cannot be said, at this stage, that this is a case that is wholly devoid of merit.” This is a departure from requiring a responding party to demonstrate a good chance of success. In making this statement, however, it notes many

“unique factual circumstances that compel the conclusion that the interests of justice require that no order for security for costs be made.”

[62] This was public interest litigation. Although there was no direct evidence of impecuniosity before the motion judge, it would be highly impractical to obtain this evidence from the representative plaintiffs and/or the 30,000 people who would benefit from the enforcement of the judgment. The Court of Appeal also noted that the defendant in that case had annual gross revenues in the billions of dollars and that it was difficult to conclude that the defendants would require protection from cost awards that amount to or could amount to a small fraction of their annual revenues. Further, the history of the litigation was that it had been going on for 25 years and that Chevron has employed all measures to resist the Ecuadorian judgment. The Court concluded that it was “difficult to accept that the motion for security for costs was anything more than a measure intended to bring an end to the litigation”: para. 26 This of course, is one of the underlying principles of security for costs motions, that they are not employed strategically.

[63] The Court of Appeal also considered this issue in *Foodinvest Limited v Royal Bank of Canada*, 2020 ONCA 387, and as part of its consideration in setting aside the order for security for costs, concluded that the claim was not “plainly devoid of merit.”: para 18. However, in that case Foodinvest was the appellant and the order for security for costs was made against a non-party, one of its shareholders. The judge had ordered that the shareholder, who was not a party, post the costs of the judgment below as well as costs of the appeal. This gave the respondent something it did not have in the court below, a judgment enforceable against the shareholder. Another relevant factor was delay.

[64] In *Icon Wheelchairs Inc. v. Gee Jay Group International Inc.*, 2025 ONSC 2638, Associate Justice Robinson questioned whether the “good chance of success” threshold still had to be met. He indicated that it was sufficient for a court to find that the case is sufficiently meritorious such that the justness of the case does not support a security for costs order. He found that given the Court of Appeal’s direction, what is important is the overall justice of the order.

[65] In my view while it is true that the merits is one of the criteria that the Court in *Chevron* said was not to be applied rigidly, there were very strong reasons why in that case the court applied a lower standard to the merits than typically applied and accepted that in all the circumstances of the case, the order for security for costs should not be made where the appeal was not plainly devoid of merit. This is also the case in *Foodinvest*.

[66] Therefore, while the merits matter, they must be considered in the context of the case as a whole and not every case will require that the plaintiff show a strong chance of success to show that the justness of the case does not support a security for costs order. I agree that depending upon all the circumstances, a sufficiently meritorious case (as opposed to a strong chance of success) may be sufficient to meet the onus on the plaintiff. The case before me does not present the same kinds of facts as in *Chevron* and *Foodinvest*. This is not public litigation but a private dispute. It would not have been difficult for Mr. Davis to show impecuniosity as one person, if that were the

case. No one is seeking an order for security for costs against a non-party. As I will set out, while there was delay, it is not that significant and the Cortis Parties have provided an explanation.

[67] In terms of the evidence, Mr. Davis argues that in reliance on certain communications with Mr. Cortis that he secured the purchase orders for PPE.

[68] Mr. Davis's case appears to rest on the communications that he had with Mr. Cortis at the beginning of the endeavor as well as his understanding that the PPE sales were a joint endeavour or partnership among the defendants. He references emails from Mr. Cortis, who admits he was involved in sourcing the PPE for MedQuest, in the early period where he used terminology such as "we" and "us" in discussing orders. For example, on March 29, 2020, Mr. Cortis introduced Mr. Davis to Mr. Goosens and said that he would "get the PPE PO's for us via MedQuest" through April, May, June, etc. As well the brochures used were made by Medihub although he admits that on March 30, 2020, a MedQuest brochure was created. He has also provided evidence of communications where there is a suggestion that MedQuest is the parent of Medihub, although there are no corporate documents before me that show that.

[69] His overall position is that the Cortis Parties were still involved but they were running the business through MedQuest. He recalls that in or around April 2020, Mr. Cortis indicated that he wanted to withdraw from the PPE business and that MedQuest paid Mr. Cortis \$100,000 for his contributions to the business.

[70] The Cortis' Parties argue the contrary. As noted, they say that the Cortis Parties and Mr. Davis only discussed selling MediHub PPE for 5 days in March 2020 before the idea was abandoned. Once it was, Mr. Cortis says he told Mr. Davis as much in or around March 30, 2020 and told him to deal with MedQuest. Notably, this is the time when the brochure changed from Medihub to MedQuest.

[71] Mr. Cortis has provided evidence that he was only paid a one-time \$100,000 fee for his work assisting with the sale of PPE and that the Cortis Defendants did not participate in any of the profits resulting from MedQuest's dealings with Mr. Davis for the sale of PPE. This is consistent with Mr. Davis's understanding as well.

[72] The evidence before me is that the orders were made by MedQuest not MediHub. As well, MedQuest managed and arranged for the shipment, freight, storage and delivery of PPE products.

[73] The Statement of Claim pleads that all of the purchase orders were made through MedQuest, invoiced by MedQuest, and payment for orders was directed to MedQuest. Mr. Davis confirmed this at his discovery.

[74] Further, Mr. Davis acknowledged that he only had discussions regarding unpaid commission with Mr. Goosens of MedQuest. He never asked either Mr. Cortis or MediHub to pay for his unpaid commissions and that all requests for payment were made to the MedQuest Defendants. Payment was only sought from the MediHub defendants at the commencement of this proceeding.

[75] In fact, in his affidavit, Mr. Davis details his considered negotiations with Mr. Goosens of MedQuest for payment from October 18, 2021 to November 27, 2021 where Mr. Goosens was providing calculations for the commission owed. He states:

In the months that followed, I unsuccessfully attempted to resolve my commission with [Mr. Goosens] and MedQuest. Ultimately, [Mr. Goosens] claimed that because of other potential MedQuest liabilities he could not take a position on what I was owed. That ended the discussions, and as I had not been paid anything for significant efforts, I started this claim.

[76] When Mr. Goosens of MedQuest was examined, he admitted that Mr. Davis is owed a commission in the amount of \$216,827.08. Mr. Davis brought a motion for payment of this amount and it was settled such that Mr. Goosens paid this amount.

[77] At this stage, there is no evidence in the record that the Cortis Parties benefitted from the sales that Mr. Davis made.

[78] As well, this is not a misrepresentation claim but a claim based upon contract and the assertion that there was a partnership among the parties. At this stage, apart from communications in the record there are no corporate documents or other financial records produced that would support the existence of a partnership.

[79] As noted, courts have held that on a motion for security for costs, if the case is complex or turns on issues of credibility, it is generally not appropriate to make an assessment of the merits at the interlocutory state: *3 Dogs Daycare* at para 25. *Coastline* at para 7.

[80] The matters do involve some matters of credibility. The issue of what the commission rate is and what sales were made by Mr. Davis are not complex. The complex thing in this case is the assessment of whether or not the Cortis Parties were involved or not and/or whether they were in a partnership with Mr. Goosens and MedQuest behind the scenes. I note again that there is no evidence in the record that shows that the Cortis Parties were shareholders of MedQuest or that they benefitted from the sales by MedQuest other than the one-time payment of \$100,000.

[81] In accordance with *3 Dogs Daycare*, it is inappropriate to make an in-depth assessment at this stage as to whether his claim against the Cortis Parties has a good chance of success. The most that can be said at this stage, is that there is a substantial issue to be tried.

Bad faith

[82] Both parties are pointing fingers at each other here. Mr. Cortis says that Mr. Goosens is acting in bad faith or tactical reasons in adding the Cortis Parties to deter him from this proceeding.

[83] Mr. Davis says that Mr. Cortis is acting in bad faith because he provided a letter dated February 2022 to Mr. Goosens about the terms that he arranged with MedQuest which reflected that he was to receive 2 % interest and that when he recommended Mr. Davis to Mr. Goosens, he

would also receive a 2 % interest. When discovered, he admitted that he provided this at Mr. Goosen's request. And he said that these arrangements never came to fruition.

[84] Afterwards, the substance of the letter was relayed to Mr. Davis's counsel who advised that if Mr. Cortis was called as a witness, he would give this evidence.

[85] However, there was an email from Mr. Cortis to Mr. Davis dated May 23, 2020 when they were discussing arrangements that says that "I think 10 % is doable" as well as a text from Mr. Cortis where he increased the commission rate to 20 %.

[86] One of the main issues in this case is the commission rate to be paid to Mr. Davis and the letter dated February 2022 Mr. Cortis and gave Mr. Goosens prior to the litigation being commenced is contrary to his own communications at the time. Although he said that these arrangements reflected in the February 2022 letter never came to fruition, it seems unlikely that he would have agreed to 10 or 20 % interest when he says he was involved but then recommended to Mr. Goosens that a 2 % interest rate be paid to Mr. Davis.

[87] Although this is concerning, during the discovery counsel did not go on to ask Mr. Cortis why he said that in the February 2022 letter when he had these written communications with Mr. Davis previously. The answer that these arrangements never came to fruition could mean many things. Further, this letter was provided six months before Mr. Davis commenced this proceeding.

Delay in bringing the motion

[88] A motion for security for costs should be brought promptly upon the moving party discovering that it has a reasonable basis to bring the motion: *3 Dogs Daycare* at para 28.

[89] Delay is often considered and was taken into account by the Court in *Foodinvest*.

[90] The Cortis Parties have known about Mr. Davis's residence since October 2023. At that time, he confirmed that he was working as President of Panther USA on a consulting visa.

[91] The latest they knew was on February 6, 2024 when Mr. Davis counsel confirmed that he was no longer ordinarily resident in response to the Cortis' Parties' request.

[92] Mr. Davis claims the Cortis Parties acted with unjustified delay because it took 16 months to bring this motion after knowing that Mr. Davis was in the United States, and 12 months after they initially threatened to bring the motion. They scheduled it on January 22, 2025.

[93] Nevertheless, Mr. Davis has not shown any prejudice by virtue of the delay in bringing the motion and the Cortis Parties have provided a reasonable explanation. They explained that Mr. Davis wanted to obtain answers to undertakings and refusals and proceed to mediation. If the matter settled then it would obviate the need for security for costs. Bringing the motion could have derailed mediation.

[94] This seems sensible to me.

Delay in the proceeding

[95] The claim was commenced in 2022.

[96] The Cortis Parties took nearly 11 months to deliver a statement of defence, and 5 months to answer undertakings from his examination.

[97] Mr. Davis relies upon *Icon Wheelchairs Inc. v. Gee Jay Group International Inc.*, 2025 ONSC 2638 at para 19 where Associate Judge Robinson dismissed the motion for security for costs and observed “[given] the history of threatening security for costs motions and the delay in ultimately bringing one, it is difficult to view this motion as anything other than tactical.”

[98] However, the delay in that case was significant—what appears to be approximately 10 years. There was a period of delay until February 2018 when the plaintiffs provided a post discovery letter with their position on security for costs, a period of delay between February 2018 and May 2021 when a prior motion for security for costs was brought and a period of delay since May 2021. There was only a satisfactory explanation for the third period of delay.

Balancing of Interests

[99] Mr. Davis has led no evidence that an order for security for costs would prevent him from proceeding with this action. He has just been paid \$216,827.08 which he said he was going to put in the bank. Therefore, he does not seem to imminently need it.

[100] On the other hand, Mr. Cortis has given evidence that his family is not wealthy and that MediHub is a small company. They say that this lawsuit for \$8,000,000 has put his family’s financial future at stake and that they have already incurred \$129,000 in legal costs. He has indicated that this has resulted in significant financial burdens on the Cortis Parties.

[101] While the amount of security for costs requested is concerning, I am not satisfied that this was a tactical motion. There are often unreasonable costs claims in litigation.

[102] Taking into account all of the relevant factors and circumstances in this case holistically, it is in the interests of justice that an order for security for costs be made. To put it another way, the plaintiff, whose onus this is, has not demonstrated that it is not in the interests of justice that an order for security for costs be made.

Issue 3: What is the amount of security that should be posted?

[103] The exercise of a court's discretion in determining a fair and reasonable amount of security for costs is similar to the exercise of its discretion in fixing costs: *Canadian Metal Buildings Inc. v. 1467344 Ontario Limited*, 2019 ONSC 566 (CanLII) at para 27.

[104] The Cortis parties seek \$500,000 as security for costs. They have provided a draft projected Bill of Costs in support of this and the \$500,000 is actually in the middle to upper middle range of the range estimated.

[105] Mr. Davis argues that if security for costs is ordered it should be in the range of at most \$50,000-\$60,000.

[106] I agree in all the circumstances that the amount sought is excessive.

[107] The amount requested is premised on a 20-day trial and 250 hours per lawyer or attendance at trial. The case should only take approximately six or seven days based on the materials before me. The case is about business arrangements established by the parties in the initial weeks of 2020. It is unclear why there would be any significant number of third-party witnesses as opposed to those who participated in these discussions.

[108] There is no evidence that any experts will be required. Damages should be based upon the contract which is a fixed percentage or based on profits or on the basis of quantum meruit.

[109] Trial preparation which is set out to be 450 hours from counsel and 266 hours from its clerk is also excessive and there is insufficient explanation as to why this amount of time would be required. I note as well that mediation has been completed as well as discovery and so the amount of time required going forward will be for trial preparation.

[110] There were only three days of discovery which says a great deal about the likely length of this trial.

[111] Further, given the delay, I assess the security for costs required only for future steps and not retrospectively as in *1417217 Ontario Inc. v. River Trails Estates Inc.*, 2019 ONSC 872 at paras 26-28.

[112] I consider the amount of \$80,000 to be within the reasonable contemplation of Mr. Davis given the complexity of the matter.

[113] However, as also noted, I am staying the security for costs order for 90 days so that there is some finality to where Mr. Davis ends up. The parties may arrange a case conference if he does move back to address next steps.

[114] I award costs to the Cortis Parties in the amount of \$26,000. Although their bill of costs is double this amount, this is the approximate amount set out Mr. Davis's Bill of Costs. I find this amount fair and reasonable and within the reasonable contemplation of Mr. Davis. It reflects the importance of the matter and the fact that this was not an overly complex matter.

Papageorgiou J.

Released: July 2, 2025

CITATION: Davis v. Goosens, 2025 ONSC 3944
COURT FILE NO.: CV-22-00685181-0000
DATE: 20250702

ONTARIO

SUPERIOR COURT OF JUSTICE

JOHN DAVIS

Plaintiff

– and –

DAVE GOOSENS, MEDQUEST MEDICAL INC.,
MARIO CORTIS and MEDIHUB INTERNATIONAL
INC.

Defendants

REASONS FOR JUDGEMENT

Papageorgiou J.

Released: July 2, 2025