

**CITATION:** Dragancik v. JAAG Properties Inc., 2025 ONSC 6389  
**COURT FILE NO.:** CV-20-1997  
**DATE:** 2025/11/17

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** KAMIL DRAGANCIK, Plaintiff

**AND:**

JAAG PROPERTIES INC., JAAG – RENTALS INC., ADAM WISSINK, and  
MCTAVISH REAL ESTATE INVESTING INC., Defendants

**BEFORE:** Tranquilli J.

**COUNSEL:** Ivanna Iwasykiw, for the Plaintiff/Responding Party

Selin Hankali, for the Defendants/Moving Parties

**HEARD:** July 2, 2025

**ENDORSEMENT**

- [1] The defendants move under rule 56.01 for an order requiring the plaintiff to post security for costs because the plaintiff is not ordinarily resident of Ontario and has insufficient assets within this jurisdiction to satisfy a potential adverse cost award. They submit the plaintiff's claim is plainly without merit such that the overall justice of the situation requires the plaintiff to post security.
- [2] The plaintiff admits that he is not ordinarily resident of Ontario at present; however, he submits it would not be just to require him to post security in these circumstances. He contends the defendants' actions that are the subject of this proceeding forced him to leave Ontario. He has personal property remaining in this jurisdiction that may satisfy a cost award. He is otherwise impecunious because of the defendants' conduct. Moreover, the defendants have known since at least 2022 that he was no longer living in Ontario and have improperly delayed in moving for this relief.
- [3] These reasons explain why I dismiss the defendants' motion.

**Background**

- [4] The following information is obtained from the pleadings and affidavit materials filed on the motion.

- [5] The action concerns a dispute arising from a 2015 “rent-to-own” agreement between the plaintiff and the defendants JAAG - Rentals Inc. and JAAG Properties concerning a residential property in Port Stanley, Ontario.
- [6] The plaintiff describes the rent-to-own contract as consisting of two interrelated agreements – a purchase option contract with the defendant JAAG Rentals Inc. and a tenant lease agreement with the defendant JAAG Properties Inc. The agreement generally provided the defendant would hold title to the property for the plaintiff’s benefit for a period of five years, during which time the plaintiff would make monthly payments. The agreement was structured such that the plaintiff occupied the property as a tenant. The monthly payments were a mixture of rent, fees and deposits to these defendants towards a down payment for the property. The plaintiff was granted the option to purchase the property in exchange for making the payments. At the end of the five-year period, the plaintiff would pay any balance owing on the purchase price and the defendant would transfer title to the plaintiff.
- [7] The claim issued in December 2021 seeks various forms of declaratory relief, general damages of \$500,000 for breach of the duty of good faith and fair dealing and civil conspiracy or unjust enrichment. The claim also seeks damages arising from the alleged breach of contract, disgorgement of sums paid to the defendants under the agreement, and additional sums for aggravated and punitive damages.
- [8] The statement of claim outlines the plaintiff’s unsuccessful efforts to exercise his option to purchase under the agreement at several intervals between June 2018 and March 2020. He pleads that the defendants unlawfully breached the agreement by variously taking the position he had defaulted on the contract and had no option to purchase or that the defendants now required an “early buy out fee”. Negotiations to transfer the property to a third party broke down over a disagreement on the division of the net proceeds. He pleads he substantially performed his obligations under the agreement such that he was entitled to the benefit of the purchase option.
- [9] In 2020, the defendants commenced eviction applications as against the tenant before the Landlord and Tenant Board. The plaintiff alleges these were irregular and improper proceedings and that he was unlawfully evicted in May 2020 on the defendants’ misrepresentation that he had abandoned the property. The plaintiff filed a consent order from the LTB on this motion evidencing the defendants’ acknowledgement that the eviction was unlawful.
- [10] In May 2020 the defendants transferred the property to the defendant McTavish Real Estate Investing Inc., the principal of which was also employed as the operations manager of JAAG Rentals.
- [11] Given these developments, the plaintiff deposes that he opted to treat the tenancy as at end and opted to pursue his remedies through this civil action. He originally sought specific performance as a remedy but now seeks damages.

- [12] The plaintiff pleads that as of 2015 he had recently immigrated to Canada from the Czech Republic with his family with the intention of becoming permanent residents. They lived in Port Stanley, and he frequently travelled between Canada and the Czech Republic until about 2020. He was also employed as a long-haul trucker and was away from the property for long periods of time; however, the property was his home base, and his family continually lived there. However, in 2018, his spouse and children temporarily returned to the Czech Republic for an extended stay so she could have family support while she was ill. He remained in Canada and continued to work in long haul trucking and living at the property between assignments. However, the defendants' dealings with the property eventually rendered him homeless and the pandemic also made it advisable for him to remain in the Czech Republic. He expressly pleads: "Dragancik is currently located in the Czech Republic due to the pandemic and his forced homelessness but plans to return to Canada as soon as the pandemic and his living situation allows."
- [13] The defendants deny liability under either contract. They contend the contracts are separate and unilateral. They plead the plaintiff was in frequent default of his obligations under the contracts and led the defendants to believe he was abandoning the property and would likely return permanently to the European Union. They claim the property was sold in exigent circumstances because of the prohibitive carrying costs.

### ***Status of Proceedings***

- [14] The parties established a Discovery Plan in January 2023. Examinations for discovery occurred in September 2022 and May 2023. A five-day trial was scheduled to commence April 7, 2025, and the action was pre-tried on January 30, 2025. Respective motions for undertakings were before the court in February 2025 that were resolved by way of a timetable. The defendants then brought this motion for security for costs, initially returnable in February 2025 (there was evidence that the motion was pending since in or about October 2024, but it was not until February 2025 that the motion came forward). The motion required successive case management conferences with Carnegie J. for direction, particularly considering the then pending trial date and debates over the length of time required.
- [15] The April 2025 trial date was ultimately adjourned on motion to LAJ Mitchell. Her endorsement of April 1, 2025, noted: "This motion was necessitated because of a change in representation of one of the 50/50 shareholders of the JAAG defendants and a failure of the defendants to answer outstanding undertakings and through no fault of the plaintiff." That adjournment triggered a return of the plaintiff's undertakings motion, which was ultimately resolved in August 2025.

### **Analysis**

- [16] The legal principles engaged in the exercise of the court's discretion on a motion for security for costs are well established and need not be detailed in these reasons. The initial onus is on the moving party to demonstrate it appears there is good reason to believe the responding party fits within one or more of the provisions of subrule 56.01(1)

of the Rules. The onus is then on the plaintiff to establish that an order for security would be unjust. The determination of the justness of the order requires a holistic approach in which all the circumstances of the case are examined. Various factors that have been considered include the merits of the claim, delay in bringing the motion, the impact of a defendant's conduct on the available assets of the plaintiff, access to justice concerns and the public importance of the litigation. The list is not static, and each case is considered on its own facts: *Yenovkian v. Shirtliff-Hinds Professional Corporation*, 2023 ONSC 5534 at paras. 4-6; *Yaiguaje v. Chevron Corporation*, 2017 ONCA 827 at paras. 22-25.

- [17] There is no dispute that the plaintiff is ordinarily resident outside of Ontario and that this appears to have been the situation since in or about 2020. The defendants have therefore satisfied their onus to demonstrate that at least one of the enumerated factors under subrule 56.01(1) are engaged such that an order for security for costs can be considered.
- [18] The plaintiff submits he is impecunious and that an order for security for costs would effectively trigger a stay on the action, preventing this matter from being disposed of on its merits. His claim and affidavit refer to having paid large sums of money to the defendants under the rent-to-own agreement only to lose the ability to purchase the asset in which had been investing. He claims the defendants' tactics played a material role in forcing his return to the Czech Republic. The court recognizes there is evidence of financial hardship. However, this falls short of the specific evidence of impecuniosity that is generally required on such a motion: *Parravano v. St. Paul Fire and Marine Insurance*, 2023 ONSC 3480 at para. 13.
- [19] The plaintiff submitted that he had left his truck in Ontario in storage. It has an estimated value of about \$45,000 and should serve as a sufficient asset that would be available in the event of an adverse costs order. However, plaintiff's counsel advised in a subsequent affidavit that they had made recent inquiries at the last known storage location could not confirm the current location of the truck.
- [20] In any event, a holistic appreciation of all the circumstances of this case nevertheless leads to the conclusion that an order requiring the plaintiff to post security for costs would be unjust. The following factors are of note in my consideration:
- a. There is substantial delay in bringing this motion. The only remaining step is trial. That trial was then adjourned ostensibly because the defendants had not satisfied all undertakings. It was expressly noted that the adjournment was not required on any part of the plaintiff's conduct.
  - b. I find the defendants have failed to offer a reasonable explanation for the delay. They suggested they were only relatively recently aware of the plaintiff's residency. However, the defendants were on notice of an issue as to the plaintiff's residency from the moment they were served with the statement of claim in 2021. It was expressly pleaded that he was currently residing outside of this jurisdiction in part due to the defendants' conduct. While I accept the defendants would need

to clarify the particulars and the plaintiff's intentions since that pleading, again, they were in possession of this information by September 2022, as demonstrated in the plaintiff's discovery evidence. They unreasonably delayed in bringing this motion until after the matter was set down for trial and on the eve of trial, relying on the plaintiff's living circumstances that have been the established *status quo* since the claim was issued.

- c. There is some debate as to whether the plaintiff must show prejudice arising from the delay: *Yenovkian*, at para. 20. I find that prejudice is not a strict requirement. Its presence or absence is a factor to consider in the holistic assessment of the case. In any event, I accept that there is some evidence of prejudice in these circumstances. The plaintiff deposes that in addition to being forced by the defendants' conduct to return to the Czech Republic, he has had to focus his available finances to assisting his family in recovering from the recent flooding there. Had he been on notice of this issue earlier in the proceeding, he might have had an opportunity to better plan his finances.
- d. I considered the defendants' submission that the plaintiff's claim is plainly without merit. The defendants contend the terms of the purchase option contract were plain and unambiguous and that the plaintiff's numerous missed or late payments clearly negated that option under the contract. However, they have offered no further particulars to support either those bald conclusory assertions or to respond to the plaintiff's detailed factual contentions in his affidavit regarding the performance of the rent-to-own agreement.
- e. In contrast, the plaintiff has provided sworn evidence as to the terms of the agreement and his account of the parties' performance of their respective obligations under the agreements, including providing evidence of the defendants' acknowledgement of the unlawful eviction of the plaintiff from the property. Moreover, notwithstanding the plaintiff's admissions of some late payments or defaults under the agreement, there is support in law for his position that the rent-to-own agreement is a bilateral contract which only requires substantial performance of the conditions for it to be enforceable: *Sail Labrador Ltd. v. Navimar Corp.*, [1999] 1 S.C.R. 265; *Jesan Real Estate Ltd. v. Doyle*, 2020 ONCA 714. In the context of the defendants' bald assertions and the plaintiff's particularized evidence and submissions, it cannot be said that the plaintiff's case is without merit.
- f. To that end, it would seem manifestly unjust to require the plaintiff to post security for costs when the consistent and uncontradicted evidence on this record indicates the defendants' tactics in the performance of the agreement played a role in his departure from Ontario.

[21] A holistic consideration of these circumstances triggers the concern that this order is not, in fact being sought for a protective purpose, but rather as a litigation tactic to prevent the

case from being heard on its merits. Courts are warned to be vigilant about the use of such orders in those circumstances: *Yaiguaje*, at para. 23.

**Disposition**

[22] The defendants' motion is dismissed for the foregoing reasons. If the parties cannot resolve costs, the plaintiff shall deliver his written cost submissions by December 1, 2025 and the defendants their written cost submissions by December 8, 2025. Written submissions are limited to two pages excluding a bill of costs or offers to settle. There is no reply without leave.

---

Justice K. Tranquilli

**Date:** November 17, 2025