

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: TDCI BRACEBRIDGE INC. and BEAVER VALLEY HOLDINGS LIMITED,
Plaintiffs

- and -

ROBIN CRAIG SPENCER JONES c.o.b. as INFOCUS APPRAISALS,
Defendants

BEFORE: Associate Justice Todd Robinson

COUNSEL: D. Forster, *for the defendant (moving party)*

K. Mooibroek, *for the plaintiffs*

HEARD: October 1, 2025

REASONS FOR DECISION
(Motion for Security for Costs)

[1] This action arises from a dispute over property appraisals performed by the defendant for financing of properties acquired by TDCI Bracebridge Inc. (“TDCI”). Beaver Valley Holdings Limited (“Beaver Valley”) is the sole shareholder of TDCI. The plaintiffs assert that they relied on the allegedly negligent appraisals to their detriment. The defendant denies liability on the basis that he had no duty of care to the plaintiffs; that they unreasonably relied on the appraisals, which were prepared solely for financing purposes; that the damages sought are too remote; that the fraud by a non-party who stole mortgage funds was an unforeseeable intervening act; and that losses were due to acts by the now-deceased former principal of the plaintiffs.

[2] In early 2024, the defendant sought to bring a summary judgment motion. Akbarali J. declined to schedule the motion and instead directed that the action proceed to trial. Trial has been scheduled for April 2026.

[3] The defendant now brings this motion seeking \$350,000 in security for costs from the plaintiffs ahead of trial. The plaintiffs oppose the motion, arguing that it is purely strategic and, in any event, the defendant has not met his threshold onus on the motion.

[4] I am dismissing the motion. The defendant has unduly delayed in moving when it had the grounds to do so well before trial was scheduled and even well before summary judgment was raised. In any event, I agree with the plaintiffs that the defendant has not met his threshold onus

on the motion. In my view, a security for costs order at this late stage of the proceeding would be unjust.

ANALYSIS

Legal framework for security for costs

[5] Although not clearly stated in the moving materials, the defendant's lawyer confirmed at the hearing that the defendant seeks security for costs under subrules 56.01(1)(a), (d) and (e) of the *Rules of Civil Procedure*, RRO 1990, Reg 194 (the "Rules"), which provides as follows:

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;

[...]

(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;

[6] Granting security for costs is a discretionary decision. There are two stages to the analysis. At the first stage, there is an initial onus on the moving party to demonstrate that the responding party fits within one or more of the provisions of subrule 56.01(1). Doing so triggers an enquiry into security for costs. At the second enquiry stage, the plaintiff bears the onus of demonstrating that an order for security for costs would be unjust. The court considers various factors and, ultimately, must make the order that is just in the circumstances of the particular case.

[7] Determining the justness of a security for costs order requires a holistic approach, in which all circumstances of the case are examined as guided by the overriding interests of justice. Although various factors have been outlined by courts to be considered, such as 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, those factors are not static. Each case must be considered and decided on its own facts: *Yaiguaje v. Chevron Corporation, supra*, 2017 ONCA 827 at paras. 22-25.

[8] The defendant cites my prior decision in *Zheng v. Universal Protection Service of Canada Corporation*, 2025 ONSC 4138. In that decision, at para. 11, I summarized case law dealing with the impact of delay in bringing a security for costs motion. I noted the following:

(a) A motion for security for costs must be brought promptly upon the defendant discovering that there is a reasonable basis for bringing the motion. A plaintiff should not have to post security after it has incurred significant expense

in advancing the litigation: *688103 Ontario Inc. v. 5000917 Ontario Inc.*, 2025 ONSC 720 at para. 14.

- (b) A moving party should not be entitled to security for costs if its delay causes prejudice to the plaintiff, but failure to explain the delay may be fatal to the motion even in the absence of prejudice: *688103 Ontario Inc. v. 5000917 Ontario Inc.*, 2025 ONSC 720 at para. 14.
- (c) Although a significant delay in moving for security for costs will not inevitably be fatal, it does call out for an explanation: *Bloomsbury & Butterfield Ltd. v. Economical Mutual Insurance Group*, 2011 ONSC 4889 at para. 56.

Delay in bringing motion

[9] In support of this motion, the defendant has tendered a preliminary affidavit of 8 pages, attaching over 9,000 pages of exhibits, and a supplementary affidavit of 3 pages, attaching some further 60 pages of exhibits. The need for such voluminous materials on this motion remains unclear to me.

[10] This action was commenced in 2017. Following a request to inspect documents, the defendant's statement of defence was delivered in November 2017. Productions were exchanged in 2018 and the plaintiffs were examined for discovery in mid-2022. During those examinations, the plaintiffs' representatives were specifically asked about TDCI's assets and the investment business of Beaver Valley. Those questions were refused as irrelevant. No motion to compel answers to those questions was brought. A mandatory mediation occurred in mid-2023. Shortly after the unsuccessful mediation, the plaintiffs set the action down for trial.

[11] In March 2024, the defendant sought to schedule a summary judgment motion. At a case conference before Akbarali J., the proposed summary judgement motion was denied and a trial was directed.

[12] This motion for security for costs was not brought until November 2024, two years after the questions related to the assets and business of the plaintiffs were refused. The allegations that the claim is frivolous, vexatious, and an abuse of process are grounded in the same defences that were pleaded by the defendant in 2017. Based on the record before me, there has been no change in the defendant's position on the merits of the claim since that time and certainly not since discoveries in 2022.

[13] No cogent explanation has been provided for why a security for costs motion was not brought sooner, particularly prior to the action being set down for trial. There has been no change in circumstances since the discovery phase was completed. I reject the submission that the proposed summary judgment motion should be considered. The delay in seeking that motion has also not been adequately explained. In addition, security for costs was not raised at the time of seeking summary judgment, even as alternative relief. By implication, the defendant was content to incur the costs of an opposed summary judgment motion without security, but now is unwilling to proceed to trial without it. The action is ready for trial and substantially all litigation steps have

been completed except for trial. Both sides have incurred considerable litigation expenses to get to this point.

[14] Case law supports that a defendant should not be permitted to “wait in the bushes” while the plaintiff expends significant sums advancing a case to the point of trial, then surprise the plaintiff with a motion for security for costs: *Bloomsbury & Butterfield Ltd. v. Economical Mutual Insurance Group*, 2011 ONSC 4889 at para. 56. In my view, that is precisely what the defendant has done here.

[15] There is no cogent or convincing explanation for the defendant’s delay in bringing this motion, which is based on positions, facts, and information that have been known to the defendant for years. Regardless of whether the defendant’s position has merit, in these circumstances, I find that an order security for costs would be unjust at this late stage in the proceeding.

Threshold onus

[16] Given my finding above, addressing whether the defendant has met his threshold onus on this motion is not strictly necessary. However, I am mindful of the potential impact of any appeal on the fixed trial dates. I thereby think it helpful to the parties for me to address the substantive motion to understand why I would not have granted security for costs even if I am wrong in exercising my discretion to dismiss this motion solely based on the defendant’s delay.

[17] The defendant seeks security for costs under subrule 56.01(1)(a), (d) and (e), namely:

- (a) the plaintiffs are ordinarily resident outside Ontario;
- (b) the plaintiffs are corporations and there is good reason to believe that they have insufficient assets in Ontario to pay the defendant’s costs; and
- (c) 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 defendant’s costs.

[18] Both plaintiffs are corporations. The record supports that Beaver Valley maintains a registered office address in Collingwood. There is no evidence supporting that the address is a “nominal mailing address” as asserted. No evidence has been tendered by the defendant on what is located there. From the responding evidence, Beaver Valley has several active bank accounts in Collingwood. The fact that directors and officers may be ordinarily resident in British Columbia is, in my view, immaterial given other facts in this case. Beaver Valley is a separate legal entity from the individuals who operate it. Although the defendant has cited case law supporting that the residency of directors and officers may be relevant where a corporation is not conducting business or the head office of a corporation appears to be nothing more than a mailing address, those are not the facts of this case. The defendant has tendered no cogent evidence to support a finding that Beaver Valley is not a going concern. To the contrary, on the record before me, Beaver Valley appears to have a historical and ongoing connection to Collingwood, Ontario. Also, as discussed below, it also appears to have substantial exigible assets in Ontario.

[19] TDCI's residency status is less clear. Its registered corporate address is a law firm, with its listed sole director and officer remaining a deceased individual. Marina Adshade has provided an affidavit setting out that she is the current director. She is a resident of British Columbia. These facts do raise some concerns about whether TDCI is properly viewed as being ordinarily resident in Ontario. However, TDCI and Beaver Valley are pursuing a joint claim. I accept the plaintiffs argument that security for costs should not be ordered where multiple plaintiffs pursue a joint claim, so long as one of them ordinarily resides in Ontario, since any one of the plaintiffs can be called upon to satisfy either a joint or joint and several cost order in its entirety: *Vogel v. Trinity Capital Corp.*, 2005 CanLII 5467 (ON SC).

[20] It is possible that, at trial, several liability could be found. However, Marina Adshade, who is the director of both plaintiff corporations, has expressly stated in her responding affidavit that Beaver Valley will indemnify TDCI if a costs award is ordered against TDCI and the court finds that liability is several and not joint. In my view, that is a sworn statement against interest that may be relied upon by the defendant in its costs submissions at trial.

[21] The defendant argues that such an undertaking must be married with proof that it is a satisfactory substitute for security, and that a bald assertion of ability to pay is insufficient: *Vogel v. Trinity Capital Corp.*, *supra*. I agree, but the plaintiffs have done that. They have tendered account statements (albeit with redacted account details) that support exigible assets held by Beaver Valley in excess of \$745,000. Those are held in Ontario in Beaver Valley's bank account and a mortgage investment trust in Collingwood. Those exigible assets are more than twice the amount of the security for costs sought by the defendant.

[22] Both remaining bases for security for costs under subrule 56.01(1)(d) and (e) require a finding that there is good reason to believe that the plaintiff corporations lack sufficient assets in Ontario to satisfy a costs award in favour of the defendant. I find that the defendant has not established "good reason to believe" that is the case.

[23] I agree with the plaintiffs that they were not obliged to tender evidence of their assets. The moving defendant has the onus of demonstrating good reason to believe that the plaintiffs lack sufficient assets in Ontario to satisfy a costs award. It would reverse the threshold onus to require a plaintiff to prove sufficiency of assets or draw an adverse inference from the plaintiffs resisting pre-judgment asset examination. That said, in assessing whether the defendant has met its threshold onus, it is appropriate for me to consider the entire evidentiary record put before me, which includes the responding materials.

[24] Case law has consistently held that a moving defendant must satisfy their initial onus under subrule 56.01(1) based on "proven facts" and not based on "mere conjecture, hunch or speculation". A bald assertion that a party has insufficient assets, on its own, is insufficient. While the moving defendant need not go so far as to prove that there are insufficient assets, they must, at least, prove facts from which a court can conclude that there is good reason to believe that that is the case: *Cigar500.com Inc. v. Ashton Distributors Inc.*, 2009 CanLII 46451 (ON SC) at para. 24.

[25] The defendant has put forward no evidence in support of its position other than the fact that TDCI underwent receivership proceedings prior to this action being commenced. The defendant

points specifically to reports of TDCI's receiver from 2015 and 2016, showing TDCI's financial picture from 10 years ago. The defendant acknowledges that, during discoveries in 2022, Marina Adshade confirmed that neither TDCI nor Beaver Valley were in insolvency or receivership proceedings. Although the defendant argues that I should not accept that assertion, no evidence of current financial circumstances of either corporation has been tendered to support a finding that there is any "good reason to believe" that they cannot satisfy a costs award.

[26] The defendant points to the plaintiffs' refusal to voluntarily provide information on their assets and operations during discoveries. The plaintiffs maintain that those questions were properly refused as irrelevant. The defendant has tendered no case law supporting that such questions were properly asked in the examinations and ought to have been answered.

[27] The defendant asserts that I should draw an adverse inference from the plaintiffs' refusal to provide evidence of their assets. I agree with the plaintiffs that doing so would reverse the defendant's threshold onus.

[28] In support of the requested adverse inference, the defendant relies on *General Products Inc. v Actiwin Company Limited*, 2015 ONSC 6923. In my view, that case does not assist the plaintiff. An adverse inference was drawn against the plaintiff, but at the second stage of the security for costs analysis, not the first stage. Notably, Lemon J. specifically discussed that the onus switches to the plaintiff "if the defendant satisfies the first stage of the enquiry" (para. 17). At that point, the responding plaintiff *does* have an evidentiary onus and, if taking the position that it has sufficient assets, the plaintiff has "a higher onus to demonstrate a sufficiency of assets 'by convincing evidence'" (para. 18). Lemon J. states expressly that he drew an adverse inference because the plaintiff failed to produce information ordered by the court (para. 36), which appears to have been various bank statements (para. 31). That is not the case here.

[29] The defendant has tendered no case law displacing the established principle that, in response to a motion for security for costs, a plaintiff bears no evidentiary burden unless the moving defendant has made out its threshold onus.

[30] I acknowledge that, during discoveries, two questions were answered before various asset and operation questions were taken under advisement. Specifically, Ms. Adshade did confirm that, at the time, TDCI was not currently carrying on business and did not have any assets in Ontario. However, I must consider that evidence in context of the totality of the record before me on this motion.

[31] As already noted, there is evidence before me that Beaver Valley has exigible assets of over \$745,000. The undisputed evidence of Ms. Adshade is that neither Beaver Valley nor TDCI have any outstanding debts or creditors. As noted above, Beaver Valley has confirmed it will indemnify TDCI for any costs award. All of this evidence undercuts the defendant's position. The defendant has tendered no evidence disputing the plaintiffs' evidence or supporting a likelihood that Beaver Valley's disclosed assets will be depleted.

[32] In my view, the defendant has failed to meet his threshold onus with respect to insufficiency of assets. That finding is sufficient to dispose of security for costs under subrule 56.01(1)(d) and

(e). Having found that the defendant has failed to establish good reason to believe that the corporate plaintiffs lack sufficient assets in Ontario, I need not address whether the claim is frivolous, vexatious, or an abuse of process. Both are required for an order for security for costs under subrule 56.01(1)(e).

[33] For the foregoing reasons, I would have dismissed the defendant's motion even if I had not found that the unexplained delay in bringing it was itself dispositive.

COSTS

[34] Prior to the motion being argued, the parties agreed that the successful side would be entitled to their costs of the motion on a partial indemnity basis as set out in their respective costs outlines (mistakenly titled a "bill of costs" by both sides). I accordingly fix costs of this motion to the plaintiffs in the amount of \$11,081.18, including HST and disbursements.

DISPOSITION

[35] The defendant's motion is dismissed. The defendant shall pay to the plaintiffs their costs of the motion fixed in the amount of \$11,081.18, including HST and disbursements, payable within forty-five (45) days. Order accordingly.

ASSOCIATE JUSTICE TODD ROBINSON

DATE: January 2, 2026