

CITATION: Jessica Li v. Sophia Hou, 2024 ONSC 6491
COURT FILE NO.: 415/24
DATE: 20241121

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Jessica Li, Applicant
-and-
Sophia Hou, Respondent

BEFORE: FL Myers J

COUNSEL: *Princess Doe*, counsel, for the Appellant
Junqing Ren, counsel, for the Respondent

HEARD: November 21, 2024

ENDORSEMENT

- [1] The Appellant was a residential tenant of the Respondent. She appealed a decision of the Landlord and Tenant Board. She abandoned the appeal before taking any steps to perfect it.
- [2] The Respondent landlord seeks costs of the abandoned appeal. The parties were on notice that the issue of costs would be considered and resolved at a case conference today. Both sides delivered brief written submissions in advance.
- [3] Rule 61.14 (4) provides:

The abandonment or deemed abandonment of the appeal or cross-appeal shall be without costs if the respondent or appellant, as the case may be, did not file a response to the appeal or cross-appeal, unless a judge of the appellate court orders otherwise.
- [4] The Respondent says that she delivered a responding Certificate Respecting Evidence and therefore she has filed a “response” so as to entitle her to costs under the rule.
- [5] Counsel for the Appellant submits that the Respondent’s Certificate Respecting Evidence simply accepted that all evidence was required as

set out in the Appellant's Certificate Respecting Evidence. Therefore, the Respondent was not even required to file a responding Certificate as she would have been deemed to have confirmed the Appellant's Certificate under Rule 61.05 (3). However, Rule 61.05 (2) requires a respondent to an appeal to deliver a Certificate Respecting Evidence even to confirm the appellant's certificate. I am not sure that relying on a provision deeming an outcome where a party violates a mandatory rule is especially cogent.

- [6] The Appellant submits that delivering a "response" so as to become entitled to costs of an abandoned appeal must contemplate the perfection of the appeal and the delivery of a responding factum by the Respondent. The factum is the only substantive step required of the Respondent in an appeal process.
- [7] I do not decide whether a Certificate Respecting Evidence is a sufficient response to meet the threshold in Rule 61.14 (4). Even if it is sufficient, I would not exercise the discretion under s. 131 of the *Courts of Justice Act*, RSO 1990 c C.43, to order costs in this appeal.
- [8] The tenant was required to commence the appeal to meet a short limitation period. Once she obtained the transcript of the hearing before the Board, she made a responsible decision that she would not go ahead. She did not, as so many do, hold out artificially to take advantage of the automatic stay of proceedings or to force the landlord to incur costs on interlocutory stay issues.
- [9] I agree with Ms. Doe that a significant award of costs would deter or impede access to justice by forcing people to refrain from even preserving their rights while they obtain a thoughtful opinion concerning an appeal. *Boucher et al v. Public Accountants Council for the Province of Ontario et al.*, 2004 CanLII 14579 (ON CA).
- [10] The appeal is abandoned with no order as to costs.

FL Myers J

Date: November 21, 2024