

COURT OF APPEAL FOR ONTARIO

CITATION: Tewari v. Aziz, 2025 ONCA 29

DATE: 20250116

DOCKET: COA-24-CV-0471 & M55575

Huscroft, Harvison Young and Zarnett JJ.A.

BETWEEN

Gaurav Tewari

Plaintiff (Appellant)

and

Tony Aziz\*, Sherry Aziz\*, Amir Quality Meats\*, Amir Specialty Poultry\*,  
Brie Thi (Stephen), Martin Czenki\* and Mallot Creek\*

Defendants (Respondents\*)

Gaurav Tewari, acting in person

Susanne Balpataky and Dora Konomi, for the respondents Tony Aziz, Sherry Aziz,  
Amir Quality Meats and Amir Specialty Poultry (the “Aziz respondents”)

Eva M. Lane, for the respondents Martin Czenki and Mallot Creek (the  
“Mallot Creek respondents”)

Heard: in writing

REASONS FOR DECISION

[1] On October 30, 2023, the appellant Gaurav Tewari issued a statement of claim against the respondents alleging, among other things, wrongful dismissal and conspiracy. The Aziz respondents and the Mallot Creek respondents subsequently brought separate motions under r. 21 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 to strike Mr. Tewari’s claim. On February 19, 2024,

Mr. Tewari moved to examine two witnesses in advance of the motion to strike. Justice C.M. Smith dismissed the motion to examine witnesses on April 2, 2024.

[2] Although Smith J.'s order was interlocutory and no appeal to this court could be brought from it, Mr. Tewari filed a notice of appeal from that order in this court on April 29, 2024.

[3] Mr. Tewari perfected his appeal on August 29, 2024. The Aziz respondents and the Mallot Creek respondents both filed responding materials, including a factum and compendium. They subsequently served a joint motion for security for costs on November 1, 2024. In response, Mr. Tewari sought an adjournment of the motion for security due to a family health emergency. The motion was adjourned to be heard in the week of December 16, 2024.

[4] On December 5, 2024, Mr. Tewari abandoned his appeal by delivering a notice of abandonment.

[5] The combined effect of rr. 61.14(3) and (4) is that, upon abandonment, a respondent is entitled to costs of the appeal, unless the abandonment took place before the respondent filed a response to the appeal (which is not the case here). Accordingly, the Aziz respondents and the Mallot Creek respondents seek costs of the appeal and of their motion for security for costs that became moot upon the abandonment of the appeal.

[6] Mr. Tewari asks us to exercise a discretion to order no costs. He says he abandoned the appeal due to personal circumstances which prevented him from responding to what he says was the delayed bringing of the security for costs motion.

[7] Assuming we have such a discretion we would not exercise it.<sup>1</sup> Mr. Tewari's appeal put the respondents to the expense of responding to his appeal. We see nothing in the timing of the motion for security that should deprive the respondents of their entitlement to costs on abandonment of the appeal nor to reasonable indemnity in respect of the expenses wasted on the motion for security. We are not prepared to assume that Mr. Tewari was somehow lulled into believing that security would not be sought. The record indicates that Mr. Tewari has substantial unpaid costs orders. Mr. Tewari should reasonably have expected, as he was causing these respondents to incur expenses, that he would have to provide assurance that they could recover costs if successful or justify why he should be allowed to continue with the appeal without doing so.

[8] As to quantum, we have reviewed the bills of costs submitted by the two groups of respondents and are of the view that some reduction of the amounts

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<sup>1</sup> Rule 61.14(3) says that a respondent is entitled to costs subject to r. 61.14(4). Rule 61.14(4) provides that an abandonment before the respondent has filed a response to the appeal is on a no costs basis unless a judge orders otherwise. In other words, there is a discretion to order costs even when the appeal was abandoned before a response. The rules do not expressly say there is a discretion to deprive a respondent of costs where the abandonment occurs after the respondent filed a response to the appeal.

claimed is warranted. We order Mr. Tewari to pay costs (i) to the Aziz respondents for the appeal, the motion for security, and the preparation of costs submissions, in the total amount of \$20,000, and (ii) to the Mallot Creek respondents for the appeal, the motion for security, and the preparation of costs submissions, in the total amount of \$15,000. These amounts are inclusive of disbursements and applicable taxes.

“Grant Huscroft J.A.”  
“A. Harvison Young J.A.”  
“B. Zarnett J.A.”