

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Maria Natario, Plaintiff

AND:

Manuel Rodrigues and Lucia Goncalves, Defendants

BEFORE: Regional Senior Justice Edwards

COUNSEL: P. Michael Rotondo, *Counsel for the Plaintiff*

Alan L. Rachlin, *Counsel for the Defendant, Lucia Goncalves*

HEARD: In-Writing

ENDORSEMENT

MOTION TO STRIKE

- [1] As the case conference judge in this matter, the plaintiff has brought a motion to strike the defendant's Statement of Defense of the defendant Lucia Goncalves. The genesis for this motion arises out of a costs award that was made by the late Master Muir on May 13, 2020.
- [2] The motion before Master Muir was brought by the defendants for an order staying the action until such time as the plaintiff brought a motion to determine the defendants insurance coverage and, in the alternative, the defendants brought a motion requiring the plaintiff to post security for costs. Counsel who argued the motion were the same counsel as who argued the motion before me (in writing). When the motion was argued before Master Muir, the law firm of Rachlin and Wolfson LLP represented both defendants. On March 12, 2021, I removed Rachlin and Wolfson as counsel for the defendant Rodrigues.
- [3] Master Muir dismissed the defendant's motion for security for costs and refused to stay the action pending the determination of the coverage issue. Master Muir awarded the plaintiff costs in the amount of \$11,000.00 to be paid within "90 days of the end of the present state of emergency in Ontario in relation to Covid-19".
- [4] The defendant Goncalves seeks an Order that would in essence amend the order of Master Muir such that the costs award should be paid in any event of the cause. The basis for such a request is based on alleged impecuniosity. The issue of the ability to pay a costs award was raised in argument before Master Muir. Master Muir considered the ability of Ms. Goncalves to pay a costs award and concluded "the defendants knew the risks they faced when they chose to bring this motion. One of the risks was a costs order that would have

to be paid within a fixed period. The defendant's evidence does not go so far as to suggest a costs order would be impossible for them to pay especially if some additional time for payment is appropriate given the current Covid-19 state of emergency."

- [5] I note that there was no appeal taken with respect to the order of Master Muir.
- [6] While I have been provided with additional evidence about the present financial situation of Ms. Goncalves, I have not been provided with evidence about her assets and ability to obtain financing to pay the outstanding costs award. Master Muir took into account Ms. Goncalves' financial situation. Master Muir was not satisfied that it would be impossible for her to pay a costs award. As such I am not prepared to in effect amend his order to make those costs payable "in any event of the cause" and thus delay payment of the \$11,000 to the plaintiff.
- [7] To bring some order to these proceedings, I am ordering that the Order of Master Muir shall be complied with no later than November 1, 2021 failing which the Statement of Defense of the defendant Goncalves shall be struck. There will be no costs of the motion before me.



Regional Senior Justice Edwards

Date: September 7, 2021