

COURT OF APPEAL FOR ONTARIO

RE: John Susin and Ester Susin, Applicants

-and-

Fermino Susin, executor of the Estate of the late John Susin Sr., Respondent

BEFORE; Justice Gillese

COUNSEL: *Scott G. Lemke*, for Ester Susin for the limited purpose of responding to this motion

Margaret Hoy, for the Respondent

John Susin, appearing in person

HEARD: August 2, 2017

ENDORSEMENT

[1] Ester Susin and John Susin have filed a notice of appeal of the decision of Ramsay J. dated Jan. 13, 2016. The moving party ask that each of Ester Susin and John Susin post security for costs in the amount of \$15,000.00. I would so order.

[2] This matter has been going on effectively since John Susin Sr. died in 1997. The estate was modest and has been depleted virtually completely as a result of having to respond to court actions, motions and proceedings taken by John Susin. Despite a vexations litigant order made against John Susin in 2008, the legal proceedings have continued.

[3] R. 61.06(1)(b) empowers this court to make an order for security for costs of the appeal where such an order could be made under rule 56.01. Rule 56.01(1)(c) empowers the court to

make an order for security for costs where the responding party has costs – the same or another proceeding that remain unpaid.

[4] Counsel for the moving party advises the court that John Susin has outstanding costs orders dating from 2007 in the approximate amount of \$30,000.00 and that Ester Susin has outstanding costs orders in the approximate amount of \$20,000.00, On my review of the record, these are very conservative estimates.

[5] In my view, the overall justice of this matter demands that the order for security for costs be made. The responding parties are ordered to each pay \$15,000.00 into court as security for the costs of the appeal. While counsel for Ester Susin has argued that his client is impecunious litigants are not entitled to proceed with impunity and crush their opponents to incur significant costs without facing the normal costs consequences if they are unsuccessful. Both respondents have a history of failing to comply with costs orders. The moving party is entitled to a measure of protection for all the unpaid costs before having to incur the additional costs associated with defending against yet another appeal.

[6] The security for costs shall be paid by each of Ester Susin and John Susin within 30 days of today's date and in any event, no further step may be taken in this appeal by either Esther Susin or John Susin prior to them having both satisfied this order for security for costs.

[7] In making these orders, I should indicate that the appeal appears to be wholly devoid of merit.

[8] I order the appeal in this matter adjourned. It is currently set for August 24, 2017. It must be adjourned to allow the responding parties the opportunity to satisfy the order for security for costs. If that is done, the applicants may approach the Appeal Scheduling Unit and ask that the

appeal be set down again for hearing. The moving party's counsel, Ms. Margaret Hoy, shall be consulted in the setting of that date.

[9] Costs of today and Monday's thrown away costs are fixed at \$1,500.00, all inclusive.

Eileen E. Gillese, J.

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