Citation: Gobeil v Goldman, 2025 MBCA 66
Date: 20250721
Docket: AI25-30-10182

IN THE COURT OF APPEAL OF MANITOBA

B E T W E E N :

	)	***A. Goldman***
ANDRE NORBERT GOBEIL and	)	*on their own behalf*
GISELE ANNE MARIE GOBEIL	)	
	)	***J. H. Kary***
(Applicants) Respondents	)	*for the Appellant*
	)	*IndigiVision Inc.*
	)	*(via videoconference)*
- and -	)	
	)	***A. M. Peterson***
	)	*for the Respondents*
AARON GOLDMAN and	)	
INDIGIVISION INC.	)	*Chambers motion heard:*
	)	***June 26, 2025***
(Respondents) Appellants	)	
	)	*Decision pronounced:*
	)	***July 21, 2025***

TURNER JA

Introduction

[1] The applicants (the Gobeils) apply for security for costs in the amount of $10,000 (the motion) for an appeal filed by the respondents, Aaron Goldman (Goldman) and IndigiVision Inc. (IndigiVision)[1].

Background

[2] In the Court of King's Bench (the KB), the Gobeils commenced an application against the respondents seeking an order for a writ of vacant

[1] Goldman is the sole director of IndigiVision Inc.

possession (the application) of property owned by the Gobeils and occupied by the respondents (the property). The respondents were tenants of the property pursuant to two consecutive lease agreements, the second of which was the subject of the litigation.

[3] The application proceeded to a two-day hearing in January 2025 (the January hearing dates). On February 3, 2025, the application judge released his written decision (see *Gobeil v Goldman*, 2025 MBKB 16 [the *application decision*]). He found that the respondents failed to renew the lease in accordance with the renewal provisions, so they were no longer entitled to possession of the property.

[4] I pause to note that the respondents made several requests to adjourn the January hearing dates, including one on the first day of the hearing. Those requests were denied by the application judge and by the Chief Justice of the KB. They also made a motion that the application judge recuse himself based on a reasonable apprehension of bias. That motion was also denied.

[5] An order was rendered shortly after the *application decision* was released. In it, the Gobeils were granted a writ of possession (the writ), and the respondents were ordered to vacate the property within thirty days of the issuance of the writ. If the respondents failed to do so, the Gobeils were entitled to enforce the writ. The respondents were also ordered to pay costs of $9,434 (on an elevated Class 4 tariff basis).

[6] On March 7, 2025, the respondents appealed the *application decision* before this Court (the appeal). The respondents completed an order form for transcripts of the January hearing dates; however, Goldman advised

that the order has not been completed because he cannot afford to pay the cost of the transcripts.

[7] On March 11, 2025, the application judge heard a stay motion filed by the respondents. That motion was dismissed, and the respondents were ordered to pay costs of $4,564 (again, on an elevated Class 4 tariff basis) (the stay decision).

[8] On March 27, 2025, the respondents also appealed the stay decision before this Court.

[9] The writ was enforced on April 3, 2025.

[10] To date, the respondents have not paid the costs ordered in the *application decision* or in the stay decision. Goldman also has not paid at least three unrelated judgments and costs awards issued by the KB: an outstanding judgment of $1,321,896.27 (see File No. CI14-01-88130); a costs award of $75,000 (see File No. CI14-01-88513); and a costs award of $13,000 (see File No. CI14-01-88514).

[11] In addition, Goldman was recently ordered to pay security for costs of $5,000 in relation to a judicial review application he filed in the KB. He did not pay; therefore, his application was struck (see File No. CI24-01-49852).

The Law

[12] Section 31 of *The Court of Appeal Act*, CCSM c C240, provides:

Security for costs **31** A judge of the court in chambers may, under special circumstances, make an order or orders for security for costs of any appeal.	**Sûreté en garantie des dépens** **31** Le juge du tribunal siégeant en cabinet peut rendre des ordonnances prévoyant la constitution d'une sûreté en garantie des dépens d'appel, lorsque des circonstances exceptionnelles le justifient.

[13] The principle of security for costs was outlined in *Amneet Holdings Ltd v 79548 Manitoba Ltd*, 2003 MBCA 108 at para 7:

> The governing principle in an application for security for costs under s. 31 is that such an order must be "just" in the "particular circumstances of the case." See *Moss (Bankrupt), Re* (2001), 160 Man.R. (2d) 80, 2001 MBCA 166, and *Harvard Investments Ltd. v. Canadian National Railway Co.* (2002), 170 Man.R. (2d) 10, 2002 MBCA 127. As noted by Scott C.J.M. in *Franck Estate v. Webster et al.* (1998), 129 Man.R. (2d) 87 (C.A.) (at para. 32): "An order for security for costs should only be granted where it is essential to do so, in the interests of justice, to provide defendants with some protection for their potential costs." Scott C.J.M. was speaking about security for costs for trial but the words are equally applicable to such an application on an appeal.

[14] A court should consider the financial means of the respondent, the merits of the appeal, the conduct of the litigants and the likely recovery of costs once the appeal has been determined (see *The College of Pharmacists of Manitoba v Jorgenson*, 2020 MBCA 80 [*Jorgenson*]).

Positions of the Parties

[15] The Gobeils submit that there are special circumstances in this case that warrant an order for security for costs. They note that the respondents have not paid the costs ordered in the *application decision* or in the stay decision, as well as in other matters before the KB. In addition, they submit that the appeal does not have arguable merit and the respondents' past behaviour supports an order for security for costs.

[16] Although Goldman and IndigiVision are distinct parties on the appeal, they take very similar positions in arguing against an order for security for costs, so I will outline them together.

[17] The respondents submit that the Gobeils have not met the high threshold required for an order for security for costs. They submit that an order for security for costs should only be used to protect against the inability to realize future costs orders and should not be used as a weapon to end litigation.

[18] The respondents submit that they are asset-rich, but cash-poor. They do not have cash to pay an order for security for costs, but do have assets (including motor vehicles) that they would be willing to somehow transfer to the Gobeils as security. They also claim to have intangible property, including an upcoming contract between IndigiVision and an unnamed entity for media content.

[19] The respondents submit that the appeal has merit. In summary, the grounds include that the application judge made disparaging remarks to Goldman and refused to accommodate Goldman's disability, which raised a

reasonable apprehension of bias. In addition, they submit that the application judge made findings of fact that were not based on the evidence and delayed the hearing of motions brought by the respondents. The respondents advised that they intend to file a notice of motion to amend their notice of appeal to add an additional ground: that the application judge erred in proceeding with the application despite the fact that the Gobeils did not comply with certain aspects of section 67(2) of *The Landlord and Tenant Act*, CCSM c L70.

Discussion

The Respondents' Financial Means

[20] On the present motion, Goldman affirms that IndigiVision currently has less than $120 in its bank account and does not have access to a significant amount of credit at this time. However, he asserts that IndigiVision will be receiving substantial funding in July 2025, and therefore, would be able to pay an order of costs should one be made at the conclusion of the appeal. To support this assertion, he included heavily redacted letters, both dated March 25, 2025. While the letters seem to set out that there has been approval of annual funding for a total of $250,000, the senders and recipients of the letters, as well as any identifying information, have been redacted. There is nothing to show that the letters have anything to do with IndigiVision or Goldman. In addition, from the information that was not redacted, it seems that the funding is specifically to support a "Healing Capacity Development Program", so it is not simply an injection of cash. I cannot conclude that the letters support the respondents' position that IndigiVision will soon have sufficient funds to pay an order of costs.

[21] In the alternative, the respondents suggest that, rather than paying an amount as security for costs, they could transfer motor vehicles to the Gobeils as security. In my view, a transfer of motor vehicles is not a realistic substitute for security for costs. The respondents have not provided any evidence of ownership or value of any motor vehicles. In addition, the Gobeils would have to store and maintain the vehicles. It is not a reasonable alternative to having funds paid into Court until the conclusion of the appeal.

The Merits of the Appeal

[22] On this motion, I am not deciding the appeal; however, I am to conduct a preliminary consideration of the appeal, mindful of the applicable standard of review (see *Jorgenson* at para 25).

[23] The greatest flaw in the merits of the appeal is that the respondents have not completed an order for transcripts. Rule 34 of the MB, *Court of Appeal Rules (Civil)*, Man Reg 555/88R, provides that where the hearing of an appeal is dependent on consideration of a transcript of proceedings, if the transcript is not received within six months from the filing of the notice of appeal, the registrar may give notice that the appeal will be deemed abandoned.

[24] Given the grounds of appeal set out by the respondents, there is no doubt that a review of the transcripts will be necessary to determine the appeal. The notice of appeal was filed on March 7, 2025; therefore, the transcripts are due no later than September 7, 2025. While that deadline is still some weeks away, from the submissions made by Goldman at the hearing of the motion and the comments above regarding the respondents' financial means, I suspect that the deadline will not be met.

[25] Should the deadline be met and the appeal not be deemed abandoned, I will consider the merits of the appeal based on the information before me on this motion.

[26] The respondents' current notice of appeal is fifty-eight paragraphs long. As noted above, they intend to make a motion to add an additional ground of appeal. Given that that motion has not yet been filed, much less determined, I will deal with the grounds of appeal that currently exist.

[27] The respondents do not seem to suggest that the application judge applied the incorrect legal test; rather, they allege that the application judge's comments and actions demonstrated a reasonable apprehension of bias against Goldman. The mere fact that a judge has decided against a party does not raise a reasonable apprehension of bias (see *CPC Networks Corp v Miller*, 2022 SKCA 95). Without the benefit of a transcript of the proceedings, it is impossible to assess the respondents' allegation that the application judge made disparaging remarks or acted in a way that showed bias against Goldman. As such, these grounds of appeal are not strong.

[28] The interpretation of evidence is a finding of fact that will be reviewed on a standard of palpable and overriding error, in the absence of which, the application judge's factual findings are owed deference. The respondents have a high threshold to meet regarding the grounds that the application judge erred in his factual findings and inferences.

[29] The decision whether to grant an adjournment was a discretionary decision, and that discretion will not be overturned unless the application judge misdirected himself or if the decision is so clearly wrong as to amount to an injustice (see *Sawatzky v Sawatzky*, 2018 MBCA 102 at paras 16-20).

The January hearing dates were set approximately four months in advance (see *application decision* at paras 4, 8). The application judge allowed the respondents to rely on evidence that had been filed in other matters and to file material far past deadlines that had been set. In addition to lengthy oral submissions, the respondents were allowed to also file a ninety-page written submission after the conclusion of the hearing of the application. Based on the information before me, it appears that the respondents were afforded great latitude in terms of procedure; therefore, their grounds of appeal regarding the denial of adjournment requests and on procedural fairness are not strong.

The Respondents' Conduct and Likely Recovery of Costs

[30] As noted above, Goldman has several significant judgments and costs orders that remain unpaid in the KB. That alone weighs heavily in favour of the Gobeils' position that Goldman's past conduct shows that an order for security for costs is necessary because it is otherwise unlikely that they will be able to recover costs at the conclusion of the appeal.

Disposition

[31] For the reasons set out, the motion for an order that the respondents pay security for costs is allowed.

[32] The Gobeils do not dispute that the tariff costs for the appeal would amount to $3,000 plus reasonable disbursements. I understand their position that it is possible that multiple motions will also be filed (including an already anticipated motion to amend the notice of appeal), so security for costs should be higher than the tariff amount for the determination of the appeal. However, I do not think that $10,000 is reasonable in the circumstances.

[33] In the result, the respondents are ordered to pay security for costs of $5,000 in total between them, by deposit with the Court, no later than September 7, 2025, failing which, the appeal will be struck without any further order. The Gobeils' filing deadlines on the appeal are suspended until the security for costs is paid in full.

[34] The respondents are also ordered to pay costs to the Gobeils on this motion in the amount of $1,000 in total between them, forthwith, regardless of the outcome of the appeal.

Turner JA