

NOVA SCOTIA COURT OF APPEAL

Citation: *Liu v. Composites Atlantic Ltd.*, 2014 NSCA 27

Date: 20140319

Docket: CA 421324

Registry: Halifax

Between:

Guo Yi Liu

Respondent/Appellant

v.

Composites Atlantic Limited

Applicant/Respondent

Judge: The Honourable Justice David P.S. Farrar

Motion Heard: March 13, 2014, in Halifax, Nova Scotia in Chambers

Held: Motion granted.

Counsel: Appellant not appearing
Jack Graham, Q.C. and Michael Murphy, for the respondent

Decision:

[1] Composites Atlantic Limited (CAL) brought a motion pursuant to Civil Procedure Rule 90.42 for an order requiring the appellant Guo Yi Liu to post security for costs. The motion was heard in Chambers on March 13, 2014. Mr. Liu was not in attendance although he was served with the motion materials.

[2] After hearing argument on behalf of CAL I granted CAL's motion and awarded security for costs in the amount of \$15,000 payable on or before April 14, 2014. At that time I indicated I would provide written reasons in due course. These are those reasons.

Background

[3] The current appeal stems from an alleged workplace incident that occurred on or about February 23, 2011, when Mr. Liu was an employee of CAL.

[4] Following that alleged incident Mr. Liu has filed a number of concurrent claims and appeals with various courts and administrative bodies. Throughout the process he has demonstrated an unwillingness to accept the terms of any adverse ruling; has demonstrated a marked disregard for the courts' procedures and resources; and showed a flagrant disrespect for members of the judiciary and opposing counsel. His conduct has made the litigation process much more complicated than it needed to be and has caused CAL considerable expense. Mr. Liu has refused to accept or honour any costs awarded against him.

[5] In what follows, I will set out the various claims, motions, decisions, appeals and correspondence that is relevant to this motion. This information is gleaned from the affidavit of Michael Murphy, co-counsel for CAL, sworn on February 25, 2014, and filed in support of this motion. I accept his affidavit as constituting an accurate, fair and complete statement of the facts in this matter.

(i) The Workers' Compensation Claim

[6] Prior to commencing action against CAL, Mr. Liu filed a claim with the Workers' Compensation Board.

[7] On April 5, 2011, his claim was denied by the WCB. Over the ensuing two years Mr. Liu appealed the WCB decision all the way to the Supreme Court of Canada. He was unsuccessful at all levels. Leave to appeal to this Court and to the Supreme Court of Canada were denied without reasons. The Supreme Court of Canada awarded costs of \$1,020.25 to CAL. Mr. Liu subsequently wrote to the Registrar of the Supreme Court on two occasions asking the Court to exempt or delay its costs award against him.

[8] He also filed a motion for reconsideration with the Supreme Court on April 18, 2013.

[9] None of this was successful and Mr. Liu has expressly refused to pay the costs awarded by the Supreme Court of Canada.

(ii) The Present Proceeding

[10] Concurrent with his unsuccessful WCB claim, Mr. Liu filed an amended Notice of Action and Statement of Claim with the Nova Scotia Supreme Court on October 22, 2012. CAL filed its Notice of Defence and Statement of Defence on December 21, 2012. Since then, there have been a number of spurious and unnecessary motions brought by Mr. Liu. The details of these various motions are set out below.

(iii) Adjournment Motion

[11] On April 10, 2013, Mr. Liu filed a Notice of Motion for Summary Judgement on the Evidence. This motion was originally scheduled to be heard on July 2, 2013. Owing to a number of factors, including the voluminous submissions of Mr. Liu on the motion, CAL requested he consent to an adjournment. He refused, stating that he objected to the “Defendant’s unreasonable delay request and its excuses for adjourning,” and that he objected to “Defendant’s further misleading to the court.” Mr. Liu made numerous unsubstantiated accusations against counsel for CAL, including that he had been destroying evidence, filing false affidavits, and abusing the court’s process by requesting an adjournment.

[12] On June 25, 2013, Justice Moir advised the parties that the Adjournment Motion would be granted without a hearing. In granting the adjournment he was, to say the least, critical of Mr. Liu’s conduct:

Mr. Liu's response to the request for an adjournment was insulting to counsel, and an abuse of process. So as far as the motion for an adjournment is concerned, the scandalous accusations against officers of the court in Mr. Liu's affidavit and brief are an abuse of process. I will not tolerate its continuation, and therefore will hear no further from Mr. Liu on the proposed adjournment.

[13] After Justice Moir issued his decision to adjourn the Summary Judgement Motion, the appellant wrote lengthy letters to him, asking that he reconsider his decision to grant the respondent's Adjournment Motion, and accusing Justice Moir of abuse of power. These letters only ceased after Justice Moir directed the appellant in no uncertain terms to stop writing to him.

[14] The Order granting the Adjournment Motion was issued on August 1, 2013. The Court set down October 15 and 16, 2013 as new dates for hearing the Summary Judgement motion.

(iv) Disclosure Motion

[15] In the meantime, CAL sought production of Mr. Liu's Affidavit Disclosing Documents. CAL's Affidavit Disclosing Documents had been sent to Mr. Liu on April 17, 2013. In the ensuing months, CAL's counsel made several unsuccessful requests for the appellant to voluntarily deliver his Affidavit Disclosing Documents. Mr. Liu refused to even respond to CAL's requests.

[16] On July 31, 2013, the respondent filed an Appearance Day Motion with the Court seeking an order requiring Mr. Liu to disclose his Affidavit Disclosing Documents. On August 9, 2013, Justice Peter Rosinski ordered him to produce his Affidavit Disclosing Document by August 30, 2013.

[17] On August 19, 2013, Mr. Liu wrote a lengthy letter to Justice Rosinski asking that he reconsider his decision to grant the respondent's Appearance Day Motion seeking delivery of the appellant's Affidavit Disclosing Documents.

[18] Although Mr. Liu met the deadline set by Justice Rosinski, the Affidavit Disclosing Documents was deficient, in that it was missing relevant information regarding his medical condition. CAL's counsel made numerous requests for the appellant to disclose any relevant information relating to his medical condition. The appellant has yet to comply with the requests.

(v) Motion to Strike

[19] On September 25, 2013, Mr. Liu filed a Notice of Motion to strike out CAL's defence on the Summary Judgement Motion, relying upon Civil Procedure Rule 88 (abuse of process). The motion also sought to "garnish" CAL's account "for the security of execution of summary judgment order", as well as to prevent "the Defendant from making a motion for the stated kind of order, without permission of a judge." In his accompanying brief, Mr. Liu alleged that CAL had been harassing him by seeking the disclosure of his medical information. He alleged that if "such violation and abuse is not stopped, it will cause further psychological harm to [him] and ruin the rest of his entire private life." Mr. Liu also alleged that CAL had destroyed evidence, made misleading motions, failed to produce relevant information, and produced "falsified affidavits."

[20] Two days later, Mr. Liu wrote a letter to the Court requesting that the Court hear the motion to strike CAL's defence on an expedited basis. CAL's counsel only became aware of these motions on October 2, 2013, after being copied on an email from the Scheduling Coordinator in which Mr. Liu was advised that Justice Coady (who was scheduled to hear the Summary Judgement Motion) had denied the request for an emergency hearing prior to the matter being heard on October 15 and 16, 2013.

[21] Justice Moir sent a letter to the parties advising of the deadlines for written submissions relating to the Summary Judgement Motion. All affidavits were required to be submitted by September 7, 2013. Mr. Liu was given until September 20, 2013 to file any further briefs with the Court. CAL's brief was due on October 4, 2013. Mr. Liu was given until October 10, 2013 to file a Reply Brief.

[22] On October 10, 2013, Mr. Liu filed a further Supplemental Affidavit, as well as a Reply Brief. The Supplemental Affidavit (which was his fourth, and contained mostly the same information found in his previous three Affidavits) was filed well after the deadlines set by Justice Moir. Mr. Liu also made a late request to cross-examine CAL's affiants in the motion. His request to cross-examine the affiants was denied by Justice Coady on the basis that it was filed out of time as well as on the basis that cross-examination was simply not necessary for the purposes of the motion.

[23] The motion for Summary Judgement was heard on October 15, 2013 by Justice Coady. The motion was dismissed on the basis that nearly every material fact relevant to the matter was in dispute.

[24] At the hearing, Mr. Liu also asked that CAL's conduct be found to be an abuse of process. Justice Coady found that none of his unsubstantiated allegations against CAL or its counsel amounted to an abuse of process. Finally, Justice Coady ordered that he would act as Case Management judge pursuant to Civil Procedure Rule 13.07. He also awarded costs to the respondent in the amount of \$2,000, plus disbursements of \$1,037.56. In doing so, Justice Coady found that the Summary Judgement Motion "was a totally unnecessary application".

[25] The respondent's counsel wrote to Mr. Liu requesting that he pay the costs awarded against him by both the Supreme Court of Canada and the Nova Scotia Supreme Court by November 8, 2013.

[26] Mr. Liu responded on November 8, 2013 by refusing to pay the costs, and accusing CAL's counsel of threatening his life. He stated in no uncertain terms that he would not pay the costs until such time as CAL paid him \$2,525,973.72 in damages.

(vi) Further Motions and Correspondence

[27] After Justice Coady dismissed the Summary Judgement Motion and assumed the role of Case Management judge, Mr. Liu filed two Notices of Motion with the Supreme Court. His communications with the Court can only be described as highly inappropriate.

[28] As for the Motions, Mr. Liu filed an incomplete Notice of Motion with the Court on November 7, 2013 seeking an Order to transfer the Supreme Court proceeding to Ontario. On November 28, 2013, he filed a second incomplete Notice of Motion, which, in addition to seeking to transfer the proceeding, also sought an Order to remove Justice Coady from presiding as Case Management judge and to stay the proceedings, on the basis that the Courts of Nova Scotia have an inherent bias against him.

[29] As for Mr. Liu's correspondence with the Court, on November 15, 2013, counsel for CAL wrote to the Court requesting that Justice Coady convene a Case Management Conference to deal with a variety of procedural issues, including disclosure of documents, discovery examinations, any outstanding motions (including the appellant's motion to transfer the proceeding to Ontario), trial readiness and preparedness, trial dates, and finally the tone and content of communications from Mr. Liu.

[30] In response, on November 19, 2013, Mr. Liu wrote a highly offensive letter to the Court in which he accused Justice Coady of committing “massive law violations, power abuse, corruption, discrimination and conspiracy”, and further claiming that Justice Coady had “co-conspired with the Defendant” and had turned himself into a “co-defendant”. He said in his letter that Justice Coady should “relinquish his power as a justice on this case,” and that a “lawsuit against Justice Coady and his co-conspiring partners is on the way.” “After this notice,” wrote Mr. Liu, “any activities attempted by Justice Coady and the Defendant will be used as further evidence of conspiring and corruption against Justice Coady and its co-defendants.”

[31] It is also apparent from the letter that he had no intention of participating in any future Case Management Conferences, given that he expressly declares the following: “The Plaintiff do [sic] not recognize the void order, do not recognize Justice Coady as a case manager in this case which is part of his order he had co-conspired with the Defendant.”

[32] On December 12, 2013, CAL filed a Notice of Motion for security for costs with the Nova Scotia Supreme Court. The motion was heard on January 17, 2014. Mr. Liu refused to participate in the hearing, and did not file any materials in response to the motion. Justice Coady, in rendering his oral decision (**Liu v. Composites Atlantic Ltd.**, Hfx. No. 408022, oral reasons dated January 17, 2014), set out the multitude of proceedings brought by the Plaintiff in Nova Scotia, describing him as a “litigation bully” who has “unleashed a volley of litigation” and “conducted himself in a very offensive manner,” refusing to pay costs orders that have been made against him. Justice Coady described Mr. Liu’s view of the litigation as “a war ...with judges, staff and opposing counsel as the enemy,” and further noted that “costs must be used to impress that use of the court is not without limitations.”

[33] He ultimately ordered Mr. Liu to post security for costs in that court in the amount of \$30,000 within 30 days of January 23, 2014, failing which his action would be dismissed. He further ordered that the matter not proceed until such time as Mr. Liu has paid the costs awarded by the Supreme Court of Canada as well as the costs awarded by the Nova Scotia Supreme Court.

[34] In addition, as a further condition of proceeding, the Plaintiff was ordered to pay CAL its costs of the motion for security for costs in the amount of \$1,000, plus

disbursements of \$1,122.87. To date, the costs have not been paid nor has the security been posted.

(vii) Appeals Relating to the Present Proceeding

[35] Concurrent with the various motions and letters noted above, Mr. Liu also filed numerous interlocutory appeals relating to these motions.

[36] Following Justice Moir's decision on the Adjournment Motion, Mr. Liu filed an amended Notice of Application for Leave to Appeal Justice Moir's decision (the "Adjournment Appeal" – CA 421324) with the Motion for Date and Directions scheduled for August 7, 2013. CAL's counsel wrote to Mr. Liu suggesting that this appeal would be moot by the time it was heard (since the original date scheduled for the Summary Judgement motion would have already passed). Mr. Liu offered no response.

[37] On July 30, 2013, CAL filed a Notice of Motion with the Court of Appeal seeking to set aside the appeal on the basis that it was frivolous, vexatious, and without merit. Justice Peter Bryson presided over the Motion for Date and Directions and the motion to set aside the appeal. Justice Bryson advised Mr. Liu during the motion that his appeal would not be heard in advance of the Summary Judgement motion itself, and further advised that the parties should focus their efforts on preparing for the hearing of that motion. He adjourned both of the parties' motions without day.

[38] Following the hearing of the Summary Judgement motion, Mr. Liu filed a Notice of Motion to "reactivate" the Adjournment Appeal. He also filed a Notice of Application for Leave to Appeal Justice Coady's October 15, 2013 decision (the "Summary Judgement Appeal"- CA 417703) as well as a Notice of Motion to transfer this appeal and the Summary Judgement Appeal to Ontario.

[39] The motion for Date and Directions was heard via teleconference by Justice Duncan R. Beveridge on November 27, 2013, who denied the motion to transfer the appeals to Ontario, and set submission deadlines for the parties.

[40] On November 28, 2013, the day after Justice Beveridge denied his motion, Mr. Liu wrote asking Justice Beveridge to reconsider his decision regarding both the motion to transfer, as well as the two deadlines he set requiring Mr. Liu to file the Appeal Books in the two appeals. Justice Beveridge responded by issuing written reasons for his decision to deny Mr. Liu's request (2013 NSCA 142).

[41] Mr. Liu has failed to honour any of the deadlines set by Justice Beveridge.

[42] On January 28, 2014, CAL filed a Notice of Motion seeking an order dismissing the Adjournment Appeal on the grounds that it lacks merit (essentially reinitiating its July 30, 2013 Motion). The Notice of Motion asked that a motion for directions to be heard in telechambers on February 12, 2014. The Notice was sent to Mr. Liu by email on January 29, 2014, and again on February 10, 2014, to the email address used by him. On February 10, 2014, he wrote a letter to the Court indicating that he no longer checks that email account, on the basis that he has been “terrified” by CAL’s counsel. On February 11, 2014, the Court rescheduled the motion for directions to be heard the following week on February 19, 2014. That same day, Mr. Liu sent another offensive and disparaging letter, again accusing CAL’s counsel of committing “another count of knowing misleading and perjury with a purpose to mislead the Court,” and requesting that the Court “subdue to Federal Court of Canada’s precedence, immediately stop doing anything related to these two appeals, Please wait for the result of civil-criminal hybrid case T-293-14.”

[43] In the meantime, on February 7, 2014, Mr. Liu wrote to the Registrar of the Court asking that the Appeal Court “stay the two appeal proceedings CA 417703 and CA 421324 from today until further notice,” on the basis that he had filed a lawsuit against numerous judges of the Appeal Court as well as the Supreme Court with the Federal Court of Canada (discussed below). He was informed that he had to file a Notice of Motion with the Court, and that a stay could only be granted by a judge in Chambers.

[44] On February 10, 2014, he filed an incomplete Notice of Motion to stay both of his interlocutory appeals that are pending before the Court of Appeal. He was informed by Ms. Brown on February 14, 2014, that his motion documents were inadequate, and that he was obligated to file proper documentation with the Court. He responded the same day, again disparaging CAL’s counsel, and stated that any “motions in Nova Scotia Court of Appeal or Supreme Court of Nova Scotia will complicate investigation, damage court’s justice function and obstruct the justice in Federal Court.” He stated that it is “this Court’s interest to do nothing at this moment to the current proceedings ... including my previous filed two motions.” The Court proceeded to schedule the teleconference for February 19, 2014.

[45] On February 18, Mr. Liu further relayed his extreme reluctance to participate in the motion for directions, stating that his appeals were “less important” than his

Federal Court claim, and that he “should not be harassed, misled and judged farther by my opponents including Nova Scotia Court of Appeal.” He stated that he has “cut off” communication with CAL’s counsel, and further accused Ms. Brown of “unacceptable” conduct, “amount to obstructing justice.”

[46] He nevertheless participated in the conference call before Justice Joel Fichaud on February 19, 2014, in which he again reiterated his view that the appeals were “meaningless.” Justice Fichaud scheduled all motions to be heard on the same day as the scheduled date for the appeal hearing (May 26, 2014).

[47] In a letter dated February 23, 2014, Mr. Liu wrote a letter to Ms. Brown indicating that he felt he had been forced into participation in the motion against his will, and accused Justice Fichaud of misleading and harassing him,. He indicated in no uncertain terms that he no longer wished for the Court to contact him.

(viii) Actions in Other Courts

[48] As noted above, on January 22, 2014, the appellant filed a statement of claim with the Federal Court of Canada, alleging many of the same things as he has alleged in the current proceeding. This Statement of Claim names as defendants CAL, CAL’S legal counsel, the Nova Scotia Workers’ Compensation Board (and some of its agents), the Workers’ Compensation Appeals Tribunal (and some of its agents), the Attorney General of Nova Scotia, all justices at both the Supreme Court of Nova Scotia who have been involved in this proceeding, all justices of the Nova Scotia Court of Appeal who have been involved in this proceeding, as well as Justices Fish, Rothstein and Moldaver of the Supreme Court of Canada. In the action he was seeking hundreds of millions of dollars in damages.

[49] This action was dismissed summarily by the Federal Court against all parties, on March 12, 2014, with costs awarded against Mr. Liu.

[50] With this background I will now address the issues on the motion.

Issues

[51] The issues before me are:

1. Should the respondent’s motion for security for costs be granted?

2. If so, what amount should be posted by the appellant?

Analysis

Should Security for Costs be Ordered?

[52] Civil Procedure Rule 90.42 governs this motion. It provides:

90.42 (1) A judge of the Court of Appeal may, on motion of a party to an appeal, at any time order security for the costs of the appeal to be given as the judge considers just.

(2) A judge of the Court of Appeal may, on motion of a party to an appeal, dismiss or allow the appeal if an appellant or a respondent fails to give security for costs when ordered.

[53] The law regarding the application of CPR 90.42 was discussed in **Sable Mary Seismic Inc. v. Geophysical Inc.**, 2011 NSCA 40 (“**Geophysical**”). Justice Beveridge confirmed that an applicant for security for costs must demonstrate “special circumstances” before the court can exercise its discretion:

[6] There are a variety of scenarios that may constitute "special circumstances". There is no need to list them. All bear on the issue of the degree of risk that if the appellant is unsuccessful the respondent will be unable to collect his costs on the appeal. In *Williams Lake Conservation Co. v. Kimberley-Lloyd Development Ltd.*, 2005 NSCA 44, Fichaud J.A. emphasized, merely a risk, without more, that an appellant may be unable to afford a costs award is insufficient to constitute "special circumstances". He wrote:

[11] Generally, a risk, without more, that the appellant may be unable to afford a costs award is insufficient to establish "special circumstances." It is usually necessary that there be evidence that, in the past, "the appellant has acted in an insolvent manner toward the respondent" which gives the respondent an objective basis to be concerned about his recovery of prospective appeal costs. The example which most often has appeared and supported an order for security is a past and continuing failure by the appellant to pay a costs award or to satisfy a money judgment: *Frost v. Herman*, at para. 9-10; *MacDonnell v. Campbell*, 2001 NSCA 123, at para. 4-5; *Leddicote*, [2001] N.S.J. No. 394, at para. 15-16; *White*, [2000] N.C.J. No. 162, at para. 4-7; *Monette v. Jordan* (1997), 163 N.S.R. (2d) (1997), 163 N.S.R. (2d) 75, at para. 7; *Smith v. Heron*, at para. 15-17; *Jessome v. Walsh*, [2002] N.S.J. No. 458, at para. 16-19.75, at para. 7;

Smith v. Heron, at para. 15-17; *Jessome v. Walsh*, [2002] N.S.J. No. 458, at para. 16-19.

See also *Branch Tree Nursery & Landscaping Ltd. v. J & P Reid Developments Ltd.*, 2006 NSCA 131.

[54] This Court has recently held that security for costs may be ordered in circumstances where a litigant acts in a vexatious or unduly querulous manner, even if that person is also impecunious. For example, in **Doncaster v. Chignecto-Central Regional School Board**, 2013 NSCA 59, the appellant had a Protection of Property Notice served upon him following a schoolyard confrontation between the plaintiff and school staff members. He commenced an application in court seeking a declaration that the **Protection of Property Act**, R.S.N.S. 1989, c. 363 did not apply to public schools, and that the notice breached his *Charter* rights. His application was dismissed by the Court “following protracted oral and written arguments.” Mr. Doncaster was ordered to pay costs to the defendants in the amount of \$5,000. Those costs were not paid.

[55] The appellant filed two separate appeals from the Court’s decision alleging the same grounds of appeal. The School Board filed a motion to stay the first appeal, at which point that appeal was discontinued by the appellant. The School Board then filed the same motion in the other appeal. The School Board’s motion sought a stay of the proceedings pending the appellant paying the costs order in the court below, and posting security for costs in the present appeal, “whether the appellant be impecunious or not” (¶27).

[56] The motion was heard by Justice Saunders. First, he dealt with and dismissed a plethora of unreasonable and spurious arguments made by the appellant (for example, the appellant claimed that Saunders, J.A. should recuse himself for having a conflict of interest). In the end, Saunders, J.A. ordered a stay and required the appellant to post security for costs. His reasoning is instructive in this case, and I borrow from it extensively:

[44] In light of Justice Coady's findings in the court below and from what I have seen on this and other matters on our Court's docket, it seems to me that litigants such as Mr. Doncaster appear to fall into a camp of persons who claim an unconditional, and unassailable "right to appeal" every step, in every case. Persons who hold such a view are seriously misguided or ill-informed. No right is absolute. In our free and democratic society every right, privilege or interest is balanced and held in check by other rights, privileges and interests. The

opportunity to appeal is regulated by long held practices and rules, by which deadlines, substance, style and content are strictly enforced. Those unwilling or unprepared to follow those strictures do so at their peril.

[45] Litigants, self-represented or not, with legitimate interests at stake will be treated with respect and will quickly come to realize that judges, lawyers and court staff are prepared to bend over backwards to accommodate their needs, to explain procedures that may seem foreign, and to ensure that the merits of their disputes will be heard. They and their cases will be seen as the raison d'être for access to justice.

[46] Litigants, self-represented or not, with a different agenda designed to wreak havoc on the system by a succession of endless, mindless or mind-numbing paper or electronic filings, or meant to drive a spouse or opposite party to distraction or despair or financial ruin will quickly come to realize that the Court's patience, tolerance and largesse have worn thin. They and their cases will be seen as an affront to justice and summarily shown the door.

[47] More often than not, the individuals in this latter group whom I would dub "self-serving litigants" leave a trail of unpaid judgments and costs orders in their wake. Judges will not sit idly by as the finite resources of their courts are hijacked by people with computer skills or unlimited time on their hands; at the expense of worthy matters, waiting patiently in the queue for a hearing. Faux litigants will be exposed, soon earning the tag "vexatious litigant" or "paper terrorist" whose offerings deserve a sharp rebuff and rebuke.

[48] Over the past two months I have encountered several such cases. Their number is mounting. I find that troubling. The Bench, the practicing Bar and the public should be concerned. This trespass upon legitimate advocacy is not in the public interest. In the short term it frustrates the efficient passage and completion of litigation. In the long term it erodes and denigrates confidence in and respect for the administration of justice. It defeats a system of dispute resolution managed and overseen by people who are doing the best they can to serve the public in a way that respects and follows the law, and produces a result that satisfies the primary object of the Rules which is to provide "for the just, speedy and inexpensive determination of every proceeding".

[49] For all of these reasons I find that this is a proper case for me to exercise my discretion under CPR 90.42 and order a stay of this proceeding CA 413884 until such time as Mr. Doncaster has fully satisfied the costs order imposed against him by Justice Coady in Halifax No. 398426, and in addition, has posted security for costs in the amount of \$3,500 in the present appeal. (Emphasis added)

[57] In the subsequent case of **Leigh v. Belfast Mini-Mills Ltd.**, 2013 NSCA 86, the defendants had brought a motion seeking security for costs for an appeal, though they did not request a stay of the appeal. This case also concerned self-

represented litigants who refused to respect the Court's procedures, and failed to honour costs awarded against them.

[58] Discovery examinations were held in 2008, about two years after the action was filed in 2006, but were quickly adjourned when one of the plaintiffs refused to respond to specific questions and refused to produce relevant documents. The defendants sought and received court orders requiring the plaintiffs to attend discovery and produce the documentation, but the plaintiffs refused, and instead brought a multitude of various motions, applications and appeals. All of the plaintiffs' motions were by and large dismissed. The defendants had also filed some motions (seeking further discoveries) as well as execution orders, which were successful but ignored by the plaintiffs.

[59] The Chambers judge, in considering the motion, noted that the appellants owed the defendants \$7,900 in unpaid costs awards, which they consistently refused to pay. He went on to state:

[20] ... The appellants have pursued frivolous and futile motions, applications, and appeals, none of which have been successful. They refuse to accept court rulings on various issues and simply appeal each and every decision. Communication has been conducted by them in such a way as to complicate and prolong litigation. ...

[22] Ms. Leigh and Ms. Cummings are not unlike Mr. Doncaster who was recently commented upon by Saunders, J.A. ...

[23] I would place the appellants in this case in that category of litigant. Being self-represented does not inoculate the appellants from the courts' processes. The appellants have no respect for court orders, have thumbed their noses at the request by the respondents to pay costs, failed to attend at a discovery and, in general, have conducted this litigation in a frivolous and vexatious manner. I pause here to comment that on my review of the record and the submissions of the parties there is absolutely no merit to the allegations of improper conduct on the part of Mr. Dickson in any of the proceedings. The appellants continued assertions that Mr. Dickson is acting inappropriately further highlights their lack of respect and understanding of the court's processes.

[24] In my view this case cries out for an order for security for costs as a result of the appellants' persistently, inappropriate conduct of this litigation.
(Emphasis added)

[60] In a related appeal, **Leigh v. Belfast Mini-Mills Ltd.**, 2013 NSCA 110, the appellants sought to appeal a decision of the Court regarding another of their

interlocutory motions in the action. The respondent again sought security for costs and their motion was granted. In reaching his decision, Justice Fichaud stated that:

[13] The Respondents have shown "special circumstances" to justify security for costs. The Appellants have failed to abide by the judicial processes for discovery and disclosure, in defiance of court orders. They have not satisfied, nor have they shown any intent to satisfy, costs orders, followed by execution orders. They have avoided examination in aid of execution. These appeals attempt to re-litigate aspects of a claim that has been dismissed, as an abuse of process, by the Supreme Court of Nova Scotia in an Order from which an earlier appeal was dismissed by this Court. Guerrilla litigation warrants security for costs. (Emphasis added)

[61] It is clear from recent decisions of this Court that "special circumstances" may arise where the appellant acts in a manner that is vexatious or abusive.

[62] I agree with CAL that the special circumstances exist in this appeal that warrants ordering security for costs against Mr. Liu.

[63] It is exceedingly clear that Mr. Liu has been uncooperative in the proceedings to say the least, and has caused the proceeding to become unfocussed and expensive by contesting matters that are routinely agreed to in litigation.

[64] Like the litigants in **Belfast Mini-Mills, supra** and **Doncaster, supra**, Mr. Liu contests everything in the proceeding, and seems incapable of accepting any adverse judgment, however trivial or insignificant.

[65] Indeed, it is clear Mr. Liu not only consistently asks judges of the Supreme Court and the Court of Appeal to reconsider nearly every decision they make in this matter, but also has a tendency, like the plaintiffs in **Belfast Mini-Mills, supra**, and **Doncaster, supra**, to appeal every adverse ruling. As set out above, whenever Mr. Liu is unsuccessful (and he has been unsuccessful in every motion thus far pursued in this matter), he will typically first write a letter to the Court, and to the judge who decided the issue, asking that the issue be reconsidered. In doing so, he essentially re-argues all of the points already raised in his original submissions.

[66] Mr. Liu stridently refuses to cooperate with counsel and the Court on even the most mundane issues, such as setting dates for the submission of motion materials to the Court. He has now indicated he will no longer communicate with CAL's counsel or with this Court. Indeed, it would appear from his most recent

motion and communications that he no longer has any intention to participate in the very proceeding that he himself has commenced.

[67] Mr. Liu also consistently makes spurious and unsustainable claims, as evidenced by the lower court's response to his Summary Judgment motion and his Motion to Strike. However unsustainable these claims may be, CAL has been obligated to respond in each and every case. His actions have forced CAL to incur significant unnecessary expenses. While this matter is relatively straightforward, the costs of this litigation have thus far been extremely high, and in the circumstances, there would appear to be, as was the case in **Doncaster, supra**, "no end in sight".

[68] Costs have been awarded against Mr. Liu on three separate occasions, and he has made it known that he has no intention whatsoever of paying them. As noted above, when asked to pay these costs he has responded by accusing CAL's counsel of making a threat against his life. He clearly has no intention of paying the costs awarded.

[69] In addition to being highly uncooperative and unreasonably reluctant to accept the Orders of the Court, Mr. Liu has also failed to abide by various deadlines set by the Court for the filing of notices and materials, which further demonstrates his complete lack of respect for the Court's procedures. Recently, he has taken to insulting Court staff, accusing them of inappropriate conduct and obstruction of justice, in complete disregard for the extensive efforts staff members have made to assist the appellant.

[70] The integrity of the Court requires that some reasonable restrictions be imposed upon Mr. Liu in order to encourage him to conduct himself in a more sensible and respectful manner.

[71] Mr. Liu's conduct throughout this proceeding constitute special circumstances that in this case make it appropriate to grant the requested security order.

Quantum of Security

[72] This Court has considerable discretion to determine the amount of security for costs which it may choose to order. Determining the anticipated costs on appeal is a common starting point for assessment. In **Crouse v. Crouse**, 2002 NSCA 15:

[15] Security for costs in this Court are generally ordered in an amount estimated to be somewhat less than the costs award anticipated on the appeal... Costs on appeal from a disposition at trial are often fixed at 40% of the trial costs awarded if this Court is satisfied that such an award would not be inappropriate....

[73] Given the behaviour of Mr. Liu to date, and the likelihood that such behaviour will continue throughout the course of these proceedings, CAL argues that total trial costs will likely amount to more than \$30,000. Justice Coady, in his January 17, 2014 decision, agreed, and ordered Mr. Liu to post security for costs in the amount of \$30,000. CAL asks that the quantum of security be set at \$15,000, payable within one month of the date of the Order.

[74] I agree with CAL that the appropriate amount of security is \$15,000 which is 40% of \$37,500. This amount shall be payable by April 14, 2014. I recognize that this amount may be high with respect to security for costs normally awarded on an appeal. However, in arriving at this amount I have taken into account the manner in which Mr. Liu's conduct has, and continues to cause, additional, needless expense.

[75] At the conclusion of Chambers I indicated that his appeal would stand dismissed if he failed to pay security for costs by April 14, 2014. However, upon further reflection and considering the wording of Rule 90.42(2), I am of the view that a further motion should be made to dismiss Mr. Liu's appeal should he fail to provide the ordered security.

Disposition

[76] Mr. Liu shall post security for costs in the amount of \$15,000 on or before April 14, 2014, failing which, CAL shall be at liberty to make a motion to dismiss this appeal.

[77] CAL shall have costs of this motion in the amount of \$1,500 inclusive of disbursements payable forthwith.

Farrar, J.A.