SUPREME COURT OF NOVA SCOTIA
Citation: *Medjuck v. Medjuck*, 2021 NSSC 269

Date: 20210927
Docket: Hfx No. 461806
Registry: Halifax

Between:

Harold L. Medjuck

Plaintiff/Respondent

v.

Hedda Medjuck (in her capacity as Executrix of the Estate of the late Franklyn D. Medjuck, Q.C.), Medjuck and Medjuck, A Law Firm, Ralph M. Medjuck, Q.C. and 51/56 Investments Limited

Defendants/Applicants

DECISION
MOTION FOR SECURITY FOR COSTS

Judge: The Honourable Justice James L. Chipman

Heard: September 9 & 14, 2021 in Halifax, Nova Scotia

Written Decision: September 27, 2021

Counsel: William L. Ryan, Q.C., John Shanks and Calvin DeWolfe, for Harold L. Medjuck
Gavin Giles, Q.C. and Robert G. Belliveau, Q.C., for Hedda Medjuck, in her capacity as Executrix of the Estate of the late Franklyn D. Medjuck, Q.C. and Ralph M. Medjuck, Q.C.
Augustus M. Richardson, Q.C., for Medjuck and Medjuck, A Law Firm
Jocelyn M. Campbell, Q.C. and John Boyle, for 51//56 Investments Limited

By the Court:

INTRODUCTION:

[1] This is a motion requesting that the Plaintiff be required to post security for costs. Originally filed on November 23, 2018 by separate motions by Hedda Medjuck and Ralph M. Medjuck, Q.C. and by 51/56 Investments Limited, this was one of three motions brought before Justice Rosinski on December 17, 2018. In his decision (*Medjuck v. Medjuck*, 2018 NSSC 321), Rosinski, J. provided this introduction:

> [1] Harold, Ralph and Franklyn Medjuck are brothers. Franklyn, a lawyer, passed away in 2016. Hedda is the Executrix of Franklyn's estate.
>
> [2] Harold is suing his brothers and an associated private corporation.
>
> [3] In his November 30, 2018 brief, Harold's counsel summarizes his claim:
>
>> This case involved alleged breaches of the plaintiff's trust that took place over the period of years ranging from the late 1970s through the late 1990s. The plaintiff says that in all cases, the actions of the defendants were fraudulently concealed from him. It should be noted that my client alleges that his brothers misappropriated money that, had it gone to him as it should have, would represent the entirety of his assets.

[2] Justice Rosinski later touched on the security for costs motion:

> [14] All defendants, have made a motion similar to the following:
>
>> Directing that the Plaintiff post with this Honourable Court security for costs as a condition precedent to the continuation of his prosecution of the within proceedings... directing the Plaintiff to pay for, or to contribute substantially to the cost of, the appointment of a referee to review certain documents contained on computers for solicitor/client privilege; directing that in the event of any failure on the part of the Plaintiff to post security for costs, these Defendants shall be at liberty to move for a future order dismissing the Plaintiff's claims against them; and directing the Plaintiff to pay costs to the Defendants for this motion (per Hedda Medjuck as Executrix).
>
> [15] All the parties agree that the motions for Security for Costs, which were to be heard December 17, 2018 should be adjourned without date to allow the parties to better prepare their factual and legal positions. I grant this motion, without costs.

[3] On February 12, 2019, arising from an Appearance Day, the late Justice Robertson issued an Order, “directing that the Plaintiff disclose certain documents and other information which touch or concern his contentions of impecuniosity in response to a pending motion by the same Defendants that he be required to post Security for Costs as a condition precedent to his continuation of these proceedings”.

[4] The material was to have been provided no later than February 22, 2019. The Plaintiff did not comply with Justice Robertson’s Order prompting a further Appearance Day. Justice Coady then granted a March 7, 2019 Order requiring the Plaintiff to produce the documents referred to in Justice Robertson’s Order on or before March 15, 2019.

[5] On December 16, 2020 the parties consented an Order appointing a Case Management Judge (CMJ). I was chosen CMJ and held on-the-record case management meetings on January 18 and March 22, 2021. At the latter meeting a motion for document disclosure was scheduled for April 27, 2021 and the security for costs motion was set for September 9 and, if required, a subsequent date. The disclosure motion was resolved and I issued a May 3, 2021 Order requiring the Plaintiff to “…fully and finally fulfill his disclosure obligations” as set out in the Justice Robertson and Justice Coady Orders, not later than 21 business days from May 3, 2021.

[6] In advance of hearing the security for costs motion I reviewed the filed briefs, authorities and evidence, the latter including Mr. Giles’ affidavit sworn and filed September 1, 2021, inclusive of 20 exhibits, summarized as follows:

Date	Document	Tab
28Nov18	Affidavit affirmed by the Plaintiff	1
23Jan19	E-mail message – IGray (the Plaintiff’s former counsel) to GGiles	2
Undated	Six Years (2012-2018) Disbursement from 1595 Barrington-Discovery Centre-$1.75 Million ($1.9 million disputed)	3
12Feb19	Order issued out of This Honourable Court (per: the late Honourable Madame Justice M. Heather Robertson)	4
19Feb19	E-mail message – GGiles to IGray and others – delivering certified copy of Order referred to above	5

Date	Document	Tab
22Feb19	E-mail message – IGray to GGiles and others	6
14Mar19	E-mail message – IGray to GGiles and others	7
14Mar19	The Plaintiff's supporting documents (as at that date) relative to his partial responses to the forms of disclosure	9
14Dec19	Letter – GGiles to IGray	10
07Jun21	E-mail message – JShanks to GGiles and others	11
07Jun21	Letter – JShanks to GGiles and others	12
07Jun21	Titled document – JShanks to GGiles and others – "Response to Questions in Justice Robertson's February 12, 2019 Order"	13
08Jun21	Plaintiff's "Response to Production Order"	14
22Jun21	Letter – GGiles to JShanks and WLRyan	15
25Jun21	Plaintiff's second "Response To Production Order" – Volume One	16
25Jun21	Plaintiff's second "Response To Production Order" – Volume Two	17
09Jul21	Plaintiff's third Supplementary Disclosure	18
20Jul21	Plaintiff's fourth Supplementary Disclosure	19
11Aug21	Plaintiff's fifth Supplementary Disclosure	20

[7] In addition, I reviewed Ms. Campbell's legal assistant's affidavit sworn August 30 and filed September 1, 2021, with twelve exhibits along with the Plaintiff's affidavit affirmed September 6, 2021 and filed the next day. Finally, in terms of evidence, I carefully considered Harold Medjuck's oral evidence, primarily consisting of his answers to Mr. Giles' very thorough cross-examination.

POSITION OF THE PARTIES

[8] The Defendants collectively seek an Order requiring the Plaintiff to post security for costs with the Court before being permitted to continue his lawsuits. The Order is sought on the basis that:

(a) the Plaintiff does not reside within the jurisdiction;

(b) the Plaintiff does not own property within the Court's jurisdiction;

(c) the Plaintiff has "so structured his financial affairs that seeking to attack and attach them *ex juris* would expose the Defendants to hardship and uncertainty"; and,

(d) the respective Defendants' exposures to costs and expenses in responding to the Plaintiff's claim in these proceedings are anticipated to be significant.

[9] The Plaintiff resists the motion, arguing as follows in his pre-hearing brief:

> 4. Notwithstanding that the Defendants had raised the potential for a motion for security of costs several years ago, it was not until the Plaintiff pushed for Case Management in this proceeding and Your Lordship was assigned to oversee its procedural steps that the motion was actually filed by the Defendants. The Defendants' appeared content to sit-in-wait on this motion and to advance it only after the Plaintiff had obtained new counsel and was attempting to move matters forward.
>
> 5. This motion, as was another prior motion filed and then abandoned, is being used as means to delay, complicate, and increase the expense of this proceeding, which should not be lost upon the Court.
>
> 6. In response to the current motion for security for costs, the Plaintiff has produced in excess of 1,000 pages of financial records detailing his financial dealings and that of his Nova Scotia company dating from 2012 onward [contained within the Giles affidavit]. This scope of financial production for the current motion is staggering and well beyond the scope of any reasonable requirement to ascertain the financial position of the Plaintiff in assessing whether an amount for security for costs is appropriate in the circumstances of this proceeding.
>
> 7. This Honourable Court must concern itself with the Plaintiff's current economic position and cannot punish him for past financial dealings or the loss of previously held assets, as the Defendants suggests should occur.

PARAMETERS OF THE PLAINTIFF'S PRODUCTION FOR CONSIDERATION ON THE MOTION:

[10] The initial production Order issued by Justice Robertson was consented to by the Plaintiff's prior counsel. I agree with his present counsels' submission that it required the Plaintiff to provide an extraordinary degree of financial information and

records to the Defendants with respect to his past and current financial dealings. In any event, the Plaintiff's consent to this production was never re-visited and the subsequent production Orders reflect the requirements originally set forth in Robertson, J.'s Order.

[11] Without question the production – as placed before the Court within the exhibits of the Giles' affidavit – is detailed and voluminous. While the information provides background and context, I have been careful to confine my assessment of the Plaintiff's income and assets from the onset of this litigation in 2017 to the present. In this regard, I am alive to the Plaintiff's argument that whatever sums he received (for example, the much emphasized – by the Defendants – proceeds from the sale of the Halifax Discovery Centre) beginning in 2012 are not necessarily germane to his financial status as at March 24, 2017 (when he commenced the first of the two lawsuits involving the Defendants) until now.

GOVERNING LAW:

[12] Civil Procedure Rule 45 governs the remedy of security for costs. The relevant portions of Rule 45 state as follows:

> **Rule 45 - Security for Costs**
>
> *Scope of Rule 45*
>
> 45.01 (1) This Rule provides a remedy for a party who defends or contests a claim and will experience undue difficulty realizing on a judgment for costs if the defence or contest is successful.
>
> (2) A party against whom a claim is made may make a motion for security for costs, in accordance with this *Rule*.
>
> *Grounds for ordering security*
>
> 45.02 (1) A judge may order a party who makes a claim to put up security for the potential award of costs in favour of the party against whom the claim is made, if all of the following are established:
>
> (a) the party who makes a motion for the order has filed a notice by which the claim is defended or contested;
>
> (b) the party will have undue difficulty realizing on a judgment for costs, if the claim is dismissed and costs are awarded to that party;
>
> (c) the undue difficulty does not arise only from the lack of means of the party making the claim;

> (d) in all the circumstances, it is unfair for the claim to continue without an order for security for costs.
>
> (2) The judge who determines whether the difficulty of realization would be undue must consider whether the amount of the potential costs would justify the expense of realizing on the judgment for costs, such as the expense of reciprocal enforcement in a jurisdiction where the party making the claim has assets.
>
> (3) Proof of one of the following facts gives rise to a rebuttable presumption that the party against whom the claim is made will have undue difficulty realizing on a judgment for costs and that the difficulty does not arise only from the claiming party's lack of means:
>
> (a) the party making the claim is ordinarily resident outside Nova Scotia;
>
> …
>
> *Terms of order*
>
> 45.03 (1) An order for security for costs must require the party making the claim to give security of a kind described in the order, in an amount estimated for the potential award of costs, by a date stated in the order.
>
> (2) The judge may require any kind of security, including payment of money into court.
>
> …
>
> *Stay and dismissal*
>
> 45.04 (1) An order for security for costs stays the proceeding, or that part of the proceeding for which the security is due, until the security is given or the claim is dismissed.
>
> …
>
> (3) A party who obtains an order for security for costs may make a motion for dismissal of the claim if the party ordered to provide security fails to do so as ordered.

[13] The Rule is clearly discretionary as a judge may order security for costs. Rule 45 describes the purpose as providing a remedy for ultimately successful parties who will experience "undue difficulty" in recovering a costs award.

[14] Rule 45.02(1) establishes four necessary conditions, each of which is a condition precedent to an order for security for costs. If one of the four conditions is not met, the security for costs application must fail.

[15] Given the emphasis on judicial discretion and fairness in Rule 45, the animating principles behind these four criteria have been helpfully canvassed in earlier cases.

[16] In *Ellph.com Solutions Inc. v. Aliant Inc.*, 2011 NSSC 316 (affirmed on appeal, *Aliant Inc. v. Ellph.com Solutions Inc.*, 2012 NSCA 89) Justice Moir reviewed the law of security for costs under the 2009 Civil Procedure Rule 45 and its relationship to the predecessor 1972 Rule.

[17] In *Ellph* at para. 18 Justice Moir relied on then Associate Chief Justice Smith's consideration of the earlier Rule in *Emmanuel v. Sampson Enterprises Limited*, 2007 NSSC 278 quoting her summary of the two underlying competing principles: "assurance that people of modest means are not prevented from having access to the court as a result of their financial status" and "the interests of justice are not served if a Plaintiff is artificially insulated from the risk of a costs award".

[18] At para. 21 Moir, J. explained that Rule 45 only required "modest modifications" to the Associate Chief Justice's statement of principles in *Emmanuel* and summarized the principles underpinning the "new rule" as follows:

> [21] The need remains for a balance between access to justice and artificial insolation from an award of costs. On the more detailed principles:
>
> 1. Rule 45.02 provides a broad discretion. The limit on discretion commented on by Justice Goodfellow in *Flewelling v. Scotia Island Property Ltd.*, 2009 NSSC 94 at para. 19 is not severe. The judge has a free hand to do what is just, so long as the defendant files a defence, shows undue difficulty, and either shows that security would not be unfair, see Rule 45.02(1), or establishes special grounds under Rule 45.02(4).
> 2. The new rule does not change the principle that the court should be reluctant to order security for costs if the plaintiff establishes that doing so will prevent the claim from going forward.
> 3. The principles that courts should avoid security for costs being used as a means test for access to justice and that the discretion should not be used to exclude persons of modest means from court are reinforced by the ground prescribed by Rule 45.02(1)(c).
> 4. The new rule does modify the principles about impecuniosity. Now, the burden is on the defendant under Rule 45.02(c) if the plaintiff is an ordinary individual rather than a nominal plaintiff or a corporation under Rule 45.02(3)(c). For nominal plaintiffs and corporations, the burden remains as stated by the Associate Chief Justice.

> 5. The principle about foreclosing the suit, that an order should not be made that prevents the plaintiff from proceeding unless the claim obviously has no merit, remains unchanged. Indeed, it is enhanced by Rule 45.02(1)(d).
>
> 6. The principle that the judge must be satisfied about the justice of ordering security for costs is reflected specifically in the new rule by the express requirement for fairness. The requirement for a circumstantial inquiry into fairness is expressly ("in all the circumstances") preserved.

[19] In this case the Plaintiff alleges impecuniosity and the Defendants take strong issue with this. The parties agree that Rule 45.02(3)(a) provides for a shifting burden in cases involving parties living outside of Nova Scotia. In *Blackhawk Construction Limited v. Martin*, 2020 NSSC 272, Justice Smith referred to *Emmanuel* and *Ellph*, noting as follows at paras. 22 and 23:

> [22] In terms of impecuniosity, the Martins say that the evidence before the Court is insufficient to rebut the presumption against them. They refer to the case law which provides that there must be more than a blanket or empty assertion of impecuniosity. Relying on that case law, counsel for the Martins says that impecuniosity must be supported by detailed evidence of a party's financial position, including income, assets and liability as well as capacity to raise security from any source.
>
> [23] The motion decision in *Ellph.com Solutions Inc. v. Aliant Inc.*, 2011 NSSC 316 was decided by Moir J. In terms of establishing impecuniosity, Moir J. stated at para. 19, referring to the decision of then Associate Chief Justice Deborah K. Smith in *Emmanuel v. Sampson Enterprises Ltd., supra*, at para. 9:
>
>> (4) Where impecuniosity is relied upon to defend against an order for security for costs there must be more than a "blanket and empty assertion of impecuniosity." A Plaintiff who alleges impecuniosity and who suggests that an Order for security for costs will stifle the action must establish this by detailed evidence of its financial position including not only its income, assets and liabilities, but also its capacity to raise security.
>>
>> [emphasis in original]

[20] Smith, J. continued her analysis of the evidentiary requirements of a party seeking to establish impecuniosity at paras. 24 – 26:

> [24] In *Yaiguaje v. Chevron Corporation,* 2017 ONCA 741 Epstein J.A. considered what appears to be a similar Civil Procedure Rule in that Province dealing with security for costs:
>
>> **Impecuniosity**

[30] A party who seeks to establish impecuniosity must lead evidence of "robust particularity", with full and frank disclosure, and supporting documentation as to income, expenses and liability: T.S. v. Publishing Group Inc. v. Shokar, 2013 ONSC 1755 (Master); Mapara v. Canada (Attorney General), 2016 FCA 305, at para. 8. Doherty J. (as he was then) explained the rationale for this evidentiary rule in Hallum v. Canadian Memorial Chiropractic College (1989), 1989 CanLII 4354 (ON SC), 70 O.R. (2d) 119 (Ont. H.C.), at pp. 9-10:

> A litigant who falls within one of the categories created by rule 56.01(a) to (f), and who relies on his impecuniosity to avoid an order requiring that he post security, <u>must do more than adduce some evidence of impecuniosity. The onus rests on him to satisfy the court that he is impecunious...The onus rests on the party relying on impecuniosity, not by virtue of the language of rule 56.01, but because his financial capabilities are within his knowledge and are not known to his opponent; and because he asserts his impecuniosity as a shield against an order as to security for costs.</u>
>
> [emphasis added]

[25] In *Elias v. Hawa,* 2018 ONSC 5703 Penny J. considered a motion for security for costs. The Plaintiff resided in California and had no assets in Ontario. He claimed impecuniosity. At para. 19 Penny J. stated:

> [19] The evidentiary threshold to demonstrate impecuniosity is high. Bald statements unsupported by detail are not sufficient. The threshold can only be reached by tendering complete and accurate disclosure of the applicant's income, assets, expenses, liabilities and borrowing ability: *Coastline Corp. v. Canaccord Capital Corp.,* 2009 CanLII 21758 (Ont. S.C.). The court must be satisfied on the evidence provided that the responding party on the motion has no ability to muster funding to continue with the proceeding: *Weidenfield v. Weidenfield Estate*, 2017 ONSC 1275, at para. 18.
>
> [emphasis added]

[26] Cromwell J.A. (as he then was) in *Wall v. Abbot* (1999), 176 NSR (2d) 96 (NSCA) stated:

> [83] ...If the plaintiff resists security that would otherwise be ordered on the basis that the order will stifle the action, the plaintiff must establish this by detailed evidence of its financial position including not only its income, assets and liability, but also its capacity to raise the security.

DISCUSSION AND ANALYSIS:

[21] In the Plaintiff's affidavits he claims that he has very little in the way of assets adding that if he is forced to post costs that, "it would certainly end my ability to pursue my current legal action against the Defendants".

[22] The affidavit and cross-examination evidence confirms that the Plaintiff is settlor and trustee of a high-value revocable trust held in trust for two of his children, Chaya Medjuck and Yehoshua Medjuck. The Plaintiff argues that it would be unjust to impute the trust's value (approximately $750,000.00) to his "significantly diminished personal and corporate finances".

[23] The Plaintiff further submits that the value of his matrimonial home ought not to be considered as evidence against his impecuniosity. He points out that the house is owned by his wife and was in her name before the actions were started.

[24] Further, the Plaintiff points to the highly discretionary aspect of Rule 45, emphasizing caselaw which stands for the proposition that such an award would effectively stamp out the viability of the lawsuit (see, for example *671122 Ontario Ltd. v. Canadian Tire Corp.* (1993), 15 OR (3d) 65 (ONCA), *Quadrangle Holdings Ltd. v. Coady Estate*, 2018 NSSC 349, *Ellph and Aliant*, the latter especially at paras. 87 and 88).

[25] As well, the Plaintiff says that the Defendants have brought the motion late thus allowing the Plaintiff, "to push himself to the financial brink before finally bringing this motion in effect, to circumvent a hearing on the merits…" .

[26] Finally, the Plaintiff states that the Defendants' submissions that the claims should be regarded as frivolous or vexatious, "are made without evidence or even compelling argument".

[27] With respect to the last argument, an assessment of the merits of these proceedings at this stage would be fraught with difficulty. In this regard, I am mindful of Justice Cromwell's words in *679927 Ontario Ltd. v. Wall* (1999), 176 NSR (2d) 96 at para. 71:

> [71] These cases recognize that the merits of the plaintiff's case is relevant to the exercise of discretion to grant or deny security for costs. There is some authority for the view that, apart from situations such as Rule 42.01(1)(f), the merits should not be considered until the defendant has made out a prima facie entitlement for security. There is also consistent recognition that the scope and nature of the review of the merits must respect the limits of what is possible and desirable on an interlocutory application. This, generally, should not be the occasion for a hearing

> on the merits if the case is complex or depends on findings of credibility. If the assessment of the merits is to be relied on, there should be little room for doubt or possibility of error and it must be the sort of determination which it is possible and appropriate to make on an interlocutory application.

[28] With the above in mind, I can say that based on my review of the material on this motion and more generally given my involvement as CMJ, that the merits of this matter are complex and will depend, at least to some extent, on credibility findings.

[29] As for the argument that the Defendants have been deleterious in advancing this motion, I need only point to the history dating back to Justice Robertson's Order. It has taken the Plaintiff approximately two and one half years to comply with the documentary disclosure requirements. Suffice it to say, I therefore find the Plaintiff's submission on delay to be ironic and ill-conceived.

[30] Returning to the Plaintiff's main arguments that the revocable trust and matrimonial home should not be considered as assets, I have carefully considered the Plaintiff's financial documentation in the context of his cross-examination. Having done so I cannot agree with the Plaintiff's characterization of his financial status. Rather than being impecunious, my review of the financial disclosure coupled with Harold Medjuck's cross-examination answers causes me to conclude that he has ample resources to post significant costs. What's more, given the evidence, I have grave concerns regarding the Plaintiff's attempt to conceal his wealth under the guise of setting up a trust for two of his children. I would add that my concern is heightened to the point that fairness dictates that I am compelled to order security for costs to send a message and guard against any further attempts by Harold Medjuck to manipulate his true financial picture.

[31] During the Plaintiff's cross-examination he stated he had originally "set aside" $750,000.00 in his limited company 3237488 Nova Scotia Limited ("323NS") to be held in trust for his children. Harold Medjuck is the sole owner and shareholder of 323NS. The Defendants submit and I agree that the evidence confirms that Harold Medjuck derives the vast majority of his income from 323NS. Whereas the Plaintiff characterizes most of his income as coming from disability insurance benefits and his sole proprietorship (until 2019), House of Better Books, the financial disclosure reveals otherwise. On cross-examination the Plaintiff admitted that almost all of his living expenses come out of 323NS.

[32] When I review 323NS's bank statements prior to November, 2018, they show:

(a) no indication of any attempt to isolate or earmark $750,000.00 in any way so as to identify that amount as distinct from the Plaintiff's personal use; and

(b) that the withdrawal of the $750,000.00 in November, 2018 represented virtually the entire amount of the funds in the bank account at that time.

[33] Whereas Harold Medjuck repeatedly said that the $750,000.00 was dedicated to his children, the evidence shows otherwise. Without question there was this amount of money withdrawn from 323NS on November 23, 2018, <u>the exact date the security for costs motions were filed</u>. When I consider all of the evidence, I conclude that the $750,000.00 was pulled out at that time by the Plaintiff in an attempt to create the appearance of impecuniosity. Further, rather than placing the $750,000.00 in a new account, the funds were subsequently returned to the same 323NS account on January 24, 2019. As I will explain, Harold Medjuck had access and repeatedly used the funds for his own benefit from this point forward.

[34] Whereas the Plaintiff says the $750,000.00 is for the benefit of his children, Chaya and Yehoshua, the documents reflect otherwise. Although he says that both adult children wear a speech processor and that they are required to update these processing units every three years at a cost of $3,500.00 for each unit, he does not explicitly state that he has paid for the units. Moreover, although Harold Medjuck says that he has concerns about his son's future, there is nothing demonstrating to date that he has paid anything towards Yehoshua's education or vocational pursuits. Indeed, the only evidence in this vein before the Court is that Ralph Medjuck contributed to the purchase of a vehicle for Yehoshua, who at the time was an Uber driver.

[35] Further scrutiny of the exhibited materials reveals that:

(a) the revocable trust agreement dated March 27, 2019 places sole discretion in the Plaintiff as settlor and trustee to withdraw from the account (and indeed to collapse it) for his personal use (and does not make 323NS a party); and

(b) all of the withdrawals from the account thereafter were solely for the benefit of the Plaintiff, not his children.

[36] On cross-examination the Plaintiff acknowledged that the trust was made revocable, "because the kids lives were in flux and we wanted to see how their lives evolved".

[37] The revocable trust agreement specifies how money may be borrowed from it yet there is no evidence that Harold Medjuck ever followed the trust requirements when he withdrew funds in excess of $70,000.00 over a two year period. Indeed, my review of the transactions causes me to conclude that the Plaintiff arbitrarily moved money in and out of the trust just as he did in the years before it was set up. All the while, there is nothing to back up his claim that the trust was established for his children.

[38] Harold Medjuck says that he provided a "full listing of all moneys borrowed from the trust" in his affidavit. These 30 withdrawals between May 8, 2019 and May 12, 2021, total $63,515.70; however, Mr. Giles took the Plaintiff through his complete banking records demonstrating that he had failed to account for several further withdrawals. Furthermore, the Plaintiff confirmed all of the withdrawals were for himself, his wife or his company. Once again, there is not one iota of evidence to back up the Plaintiff's claim that the trust funds were for his children.

[39] Although the Plaintiff says that he will repay the funds with the proceeds of a life insurance policy, the beneficiary is shown to be his wife. I would add that there are no promissory notes or the like to backup Harold Medjuck's claims that he will pay back the funds. In all of the circumstances, I am drawn to Mr. Belliveau's characterization of the account as the Plaintiff's "private piggy bank". On balance, the 323NS account has shown to be anything but a trust dedicated to Chaya and Yehoshua Medjuck. Accordingly, given all of the evidence I am left to conclude that Harold Medjuck set up a sham trust in a purposeful attempt to avoid posting security for costs. In this regard, the facts reveal that the spectre of this very application prompted the Plaintiff to attempt to shield $750,000.00.

[40] Having regard to the documentary and oral evidence highlighted above, I find that the Plaintiff's purported "setting aside" of $750,000.00 for his children was a fraudulent transaction, the sole purpose of which was to shield his personal assets from any order for security for costs.

[41] The Plaintiff testified in cross-examination that his house is in his wife's name, that she does not support his lawsuit and that as a result she would not agree to offer the matrimonial home as security for costs. However, the evidence confirms that she is reliant on the Plaintiff's money. For example, Harold Medjuck paid off the mortgage on the house and has continued to pay substantial property taxes and household expenses. Accordingly, I am of the view that the Plaintiff has a

matrimonial interest in the house. Clearly the Plaintiff supports his wife (and her interest in the house) with this personal funds.

[42] In the result, the Plaintiff's protestations of impecuniosity are not credible. He has more than enough in personal assets to meet a significant order for security for costs. Furthermore, the evidence reveals that the matrimonial home is unencumbered and has a value that he places at $1.2 - $1.4 million.

CONCLUSION:

[43] I am of the emphatic view that fairness dictates that the motion be allowed. The Plaintiff lives outside of Nova Scotia. He has no real property or assets in the Province. Harold Medjuck has not established that an order for security will prevent the claim from going ahead.

[44] The trial has yet to be scheduled. I was appointed CMJ less than a year ago. It took the Plaintiff until this past summer to come up with what he agreed to produce in early 2019. Upon receipt of the financial information the Defendants moved with dispatch to bring the motion. The evidence has revealed that the Plaintiff not only has significant financial resources but that he has attempted to shield them. The respective Defendants' exposure to costs in responding to this claim will be significant.

[45] In all of the circumstances I am satisfied that fairness dictates that the Plaintiff post $100,000.00 as security for costs before any further steps in this litigation occur. This includes the case management meeting scheduled for October 12th; unless, of course, the Plaintiff posts the required funds in advance of the Thanksgiving weekend preceding the meeting.

[46] In ordering that $100,000.00 be posted I am cognizant of the amount sought by the Defendants ($150,000) and suggested by the Plaintiff when pressed, as an alternative position ($15,000.00 - $20,000.00). In my view the $100,000.00 satisfies the justice of ordering costs in this case as it strikes the right balance given the overall claim (in the range of $7 million), merits (having regard to the pleadings I cannot say that the claim has no merit but neither am I persuaded that it is meritorious), Harold Medjuck's out of Province residency and his true financial position along with his attempts to cover-up his actual net worth.

[47] With respect to costs on this motion, I award the Defendants $5,000.00, as follows:

- $2,250.00 to Hedda Medjuck and Ralph M. Medjuck, Q.C.;
- $2,250.00 to 51/56 Investments Limited; and
- $500.00 to Medjuck and Medjuck, A Law Firm.

[48] The above discrepancy is on account of Mr. Richardson not attending the second day of the motion (this is not a criticism, as he was previously booked and effectively accommodated the Court by instead submitting a succinct written submission) and given that his pre-hearing submission was very brief and essentially "piggy backed" those of the other Defendants (again, not a criticism).

[49] As Ms. Campbell provided the Court with a draft Order, I would ask her to finalize it, with consent from the other parties as to form.

Chipman, J.