[2023] JMSC Civ 10

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2013HCV04173

BETWEEN	**KEITH NETHERSOLE**	**CLAIMANT**
AND	**AIRPORTS AUTHORITY OF JAMAICA**	**1ST DEFENDANT**
AND	**NORMAN MANLEY INTERNATIONAL AIRPORT**	**2ND DEFENDANT**

IN CHAMBERS

Phyllis Dyer instructed by Phyllis L. Dyer Attorney-at-Law for the Claimant.

Joerio Scott instructed by Messrs. Samuda & Johnson Attorneys-at-Law for the Defendants.

Civil Practice and Procedure- Security for costs application- Ordinarily resident abroad – No assets in the Jurisdiction- Whether unable to pay costs- Delay in bringing the application.

Heard: 30th November, 2022 and 31st January, 2023

P. MASON J (Ag)

BACKGROUND

[1] The facts in this matter are straightforward. The Claimant, Mr. Keith Nethersole alleges that on or about the 19th of August, 2011, he was injured at the Norman Manley International Airport. While downstairs in the pre-boarding area, the chair on which he sat collapsed causing him to fall to the ground. He commenced proceedings on the 18th of July, 2013, by filing a Claim Form and Particulars of

Claim against the Defendants for damages for personal injuries, loss and expenses incurred, as a result.

[2] The 1st Defendant, the Airport Authority of Jamaica, is a body incorporated under the Airport Authority Act with the power to make regulations for the operation and use of the Norman Manley International Airport. The 2nd Defendant, the Norman Manley International Airport, is incorporated under the abovementioned Act as described in the Norman Manley International Airport Order 1960 and the facility at which the incident occurred.

[3] The Defendants, in their Defence filed on the 5th September, 2013, deny any negligence or that they caused the injuries pleaded by Mr Nethersole. It is important to note that the Defendants acknowledged that there was an incident concerning the Claimant at the Norman Manley International Airport where he was treated by their nurse. The Defendants have, however, filed an ancillary claim in which they are seeking to be indemnified by Neveast Supplies Limited, the supplier of the chair in question of any costs to the Claimant that may be awarded at trial. In their Defence at paragraphs 4, 9 and 10, the following was stated:

> *"4. Save that these Defendants will admit that the 2nd Defendant received a report that the Claimant fell from a chair in the Food Court area of the Ticketing Concourse and sustained injuries on the date alleged, no further admission is made to paragraph 6 of the Particulars of Claim.*
>
> *9. These Defendants aver that the dining furniture located in the Food Court of the 2nd Defendant's premises, including the chair on which the Claimant allegedly sat, was purchased from Neveast Supplies Limited (Neveast), a reputable supplier of furniture and that the 2nd Defendant acted reasonably in contracting Neveast to supply the said items having taken all steps to satisfy itself, and was*

so satisfied, that the said Neveast was a competent and reliable provider of furniture.

10. In the premises, these Defendants will say that the said fall was caused and/or materially contributed to by the negligence of Neveast Supplies Limited."

THE APPLICATION

[4] It is from that Claim for damages that this application has arisen for security for costs, filed by the Defendants/Applicants (hereinafter referred to as "the Applicants") on the 26th of January, 2021, supported by the Affidavit of Chad Lawrence filed on the 26th January, 2021.This application for security for costs is being vehemently opposed by the Claimant. Against this background, the following orders are being sought by the Applicants:

"1. The Claimant gives security for the Defendants' costs in this action within 21 days of the date of this Order in the amount of $1,795,000.00

2. The Security for Costs be paid into an interest bearing account in the joint names of Phyllis L. Dyer and Samuda & Johnson at a branch of the National Commercial Bank Jamaica Limited within 21 days of the date of the Order;

3. The action herein be stayed until the giving of such security for costs in accordance with the terms of the order herein as provided;

4. In the event the Claimant fails to give such security for costs, within the prescribed time the claim struck out; and

5. Costs, incidental to and occasioned by this application be awarded to the Defendants to be paid forthwith upon agreement or taxation."

[5] The grounds relied on in support of the application on which the Applicants have sought the said Orders are articulated as follows:

"(i) This application is made pursuant to part 24 of the Civil Procedures Rules, 2002 and under the inherent jurisdiction of the Court;

(ii) The Claimant is ordinarily resident out of the jurisdiction and does not have assets within the jurisdiction;

(iii) In all the circumstances, it is just to make the said orders"

ISSUES

[6] The issues in determining the application are as follows:

(1) Whether any of the conditions for ordering security for costs as outlined in Part 24.3 of the Civil Procedure Rules are satisfied; and if so

(2) Whether having regard to all the circumstances of the case, it would be just to exercise the court's discretion in favour of making the order;

(a) was there delay in the filing of the application for security for costs?

(b) will an order for security for costs stifle the claim by the Claimant?

(3) Whether the amount sought by the Applicants is appropriate enough so as not to stifle the claim of the Claimant.

(4) If the answer to (3) above is yes, then the question is, what ought to be the amount ordered for security for the Applicants' costs.

SUBMISSIONS

[7] In support of the application, the Applicants on the 24th May, 2022, filed written submissions and a List of Authorities. The Claimant filed submissions on the 17th June, 2022. I have read both carefully and am grateful to both parties for their effort in filing the submissions. I have found them to be helpful. I will only make reference to same, in so far as is necessary in determination of this application.

[8] Counsel for the Applicants submit that they have satisfied the requirement that the Claimant is ordinarily resident outside the jurisdiction by placing reliance on ***Kidson Barnes v City of Kingston Cooperative Credit Union Limited*** (C.L 2002/B-134, delivered September 15, 2006 and ***Manning Industries Inc. and Manning Mobile Co. Ltd v Jamaica Public Service Co. Ltd (C.L. 2002/M058)***. Counsel states that in accordance with the authority of ***Pisante v Logothetis [2020] EWHC 3332*** at paragraph 52, that in assessing the adequacy of a Claimant's assets, it is critical to have regard not only to the assets, but also to his liquidity and liabilities.

[9] Counsel puts forward the submission that the impecuniosity of the Claimant together with the residence outside the jurisdiction will move a court to grant an order for security for costs. Counsel relied on ***Barton v Minister of Foreign Affairs [1984] FCA 108.*** It is further submitted that the evidence of the Claimant's financial position shows that it is precarious and discloses a history of instability; that it was adverse prior to the advent of this claim; that he has no liquid assets in the jurisdiction and that if the Claimant is unsuccessful at trial he will not be in a position to satisfy the costs order.

[10] Counsel for the Applicants, in their submissions, assert that the burden of proving the claim would be stifled rests squarely on the Claimant's shoulders (see ***Rushti v Alkhoshirbi [2007] NSWSC 1374***). The Applicants submit that they are disputing the very integrity of the case for the Claimant insofar as the Claimant asserts that the accident occurred, in light of his history in making claims for

personal injuries. Consequently, that the Claimant has failed to place any evidence to discharge the onus it bears.

[11] Counsel further relied on ***Rushti (Supra)*** which infers that prejudice must accompany the delay and if the Claimant has suffered no material prejudice because of said delay, the significance of the delay is reduced. Additionally, there is no evidence to negate a costs order being made. Regarding the conduct of the parties, Counsel submits that it is not sufficient that the Defendants' conduct contributed to the Claimant's impecuniosity.

[12] Lastly, Counsel for the Applicants submit that once the conditions of ***Rule 24.3*** are met, it is for the Claimant to show special circumstances that would relieve him from an order to pay security for costs. To this end, Counsel submits that the Claimant has failed to demonstrate that other factors have intervened causing a security order to not be granted. As such, Counsel submits that regarding the amount to be awarded, the authorities indicate that the amount should be tailored to reflect the nature and size of the risk against which it is designed to protect (see ***Manning Industries Inc. and Manning Mobile Co. Ltd***) above.

[13] The Claimant's Counsel submits that he admits that he is a resident abroad and that he has no assets in this Jurisdiction but that bankruptcy proceedings were discontinued and that he is now able to pay his bills and is currently doing so. The Claimant submits that as such, he is therefore asking the Court in the exercise of its discretion to refuse the Application on the ground that it is unfair and unjust to grant same. Counsel relied on ***Texuna International Ltd v Clairn Energy Plc [2004] EWHC 1102 (Comm)*** in outlining the points that the court should consider in exercising its discretion, including the delay in bringing the application; whether the grant would stifle the claim; and the Claimant's impecuniosity.

[14] The Claimant submits that while the delay has not prejudiced him, he is being asked to consider his finances almost at the end of the proceedings. He further submits that it is the injuries he sustained on the Applicants' property that has

resulted in his inability to work full time and which further caused him to be unable to meet all his expenses on time. This resulted in bankruptcy proceedings. As such, it is submitted that his impecuniosity is the fault of the Applicants. The Claimant argues that the Applicants assertions that he is accident prone is unsubstantiated and has no bearing on the application.

[15] Final submissions advanced by Counsel for the Claimant is that the justice of the case requires that he be afforded the opportunity to have his case tried and that the granting of a security for cost order would stifle his claim, as he is unable to pay the amount sought. In the alternative, he is therefore asking the Court that if security for cost is granted that it not exceed $400,000.00.

THE LAW

[16] ***Part 24*** of the ***Civil Procedure Rules, 2006*** outlines the provisions to guide the Court when dealing with an Application for security for Costs. In particular ***Rules 24.2 and 24.3 of the CPR***, which read as follows:

> *"**Application for order for security for costs***
>
> *24.2*
>
> *(1) A defendant in any proceedings may apply for an order requiring the claimant to give security for the defendant's costs of the proceedings.*
>
> *(2) Where practicable such an application must be made at a case management conference or pre-trial review.*
>
> *(3) An application for security for costs must be supported by evidence on affidavit.*
>
> *(4) Where the court makes an order for security for costs, it will –*
>
> *a. determine the amount of security; and*

b. direct –

i. the manner in which, and

ii. the date by which the security is to be given.

Conditions to be satisfied

24.3. The court may make an order for security for costs under rule 24.2 against a claimant only if it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order, and that –

(a) The claimant is ordinarily resident out of the jurisdiction;

(b) The claimant is a company incorporated outside the jurisdiction;

(c) The claimant:

(i) Failed to give his or her address in the claim form;

(ii) gave an incorrect address in the claim form; or

(iii) has changed his or her address since the claim was commenced, with a view to evading the consequences of the litigation;

(d) The claimant is acting as a nominal claimant, other than as representative claimant under Part 21, and there is reason to believe that the claimant will be unable to pay the defendant's costs if ordered to do so;

(e) The claimant is an assignee of the right to claim and the assignment has been made with a view to avoiding the possibility of a cost order against the assignor;

(f) Some person other than the claimant has contributed or agreed to contribute to the claimant's costs in return for a share of any money or property which the claimant may recover; or

(g) The claimant has taken steps with a view to placing the claimant's; assets beyond the jurisdiction of the court."

[17] Moreover, ***rule 30.3 of the Civil Procedure Rules*** governs the making of affidavit evidence and provides as follows:

"(1) The general rule is that an affidavit may contain only such facts as the deponent is able to prove from his or her own knowledge;

(2) However an affidavit may contain statements of information and belief—

(a) Where any of these Rules so allows; and

(b) Where the affidavit is for use in an application for summary judgment under Part 15 or any procedural or interlocutory application, provided that the affidavit indicates-

i. Which of the statements in it are made from the deponent's own knowledge and which are matters of information or belief; and

ii. the source for any matters of information and belief.

(3). The court may order that any scandalous, irrelevant or otherwise oppressive matter be struck out of any affidavit…"

ANALYSIS

[18] The purpose for ordering security for costs is one that should at all times be a factor to be kept in mind. The Court has complete discretion as to whether security for

costs is granted. The Honourable Justice Mrs Shelly-Williams in ***Dwayne McGaw v Jamaica Infrastructure Operator Limited & United Management Services Limited [2017] JMSC Civ 22*** at paragraph 11 quoted Sir Nicolas Browne-Wilkinson, Vice Chancellor in his judgment of ***Porzelack KG v Porzelack (UK) Ltd [1987] 1 All ER 1074***, at pages 1076 and 1077 that:

> *"The purpose of ordering security for costs against a plaintiff ordinarily resident outside the jurisdiction is to ensure that a successful defendant will have a fund available within the jurisdiction of this court against which it can enforce the judgment for costs. It is not, in the ordinary case, in any sense designed to provide a defendant with security for costs against a plaintiff who lacks funds. The risk of defending a case brought by a penurious plaintiff is as applicable to plaintiffs coming from outside the jurisdiction as it is to plaintiffs resident within the jurisdiction"*
>
> *"I do not think that is a right course to adopt on an application for security for costs. The decision is necessarily made at an interlocutory stage on inadequate material and the possibilities of success or failure merely blows the case up into a large interlocutory hearing involving great expenditure of both money and time."*

The approach to be taken by the Judge when dealing with the evidence before deciding whether security for costs ought to be given at the interlocutory stage was enunciated further by Sir Nicolas Browne-Wilkinson. Where he stated:

> *"Undoubtedly, if it can clearly be demonstrated that the plaintiff is likely to succeed, in the sense that there is a very high probability of success, then that is a matter that can properly be weighed in the balance. Similarly, if it can be shown that there is a very high probability that the defendant will succeed, that is a matter that can*

> *be weighed. But for myself I deplore the attempt to go into the merits of the case unless it can be clearly demonstrated one way or another that there is a high degree of probability of success or failure."*

[19] The meaning of "ordinarily resident" was expounded on at paragraph 45 in ***Symsure Limited v Kevin Moore [2016] JMCA Civ 8*** where, Phillips JA stated that:

> *"On the issue of "ordinarily resident outside of the jurisdiction" the author Stuart Sime in his oft cited text on "**A Practical Approach to the Civil Procedure**", 15th edition in chapter 24, page 302, in paragraph 24.11 referring to the House of Lords tax case of **Lysaght v Commissioners of Inland Revenue** commented that "residence is determined by the claimant's habitual and normal residence as opposed to any temporary or occasional residence". The question, the learned author stated, is one of fact and degree and the burden of proof is on the defendant. So, visits to a country though regularly made, will not necessarily make one a resident of the country, unless the time spent and other factors, including setting up a home, and owning other property, can lead to that conclusion, and ordinary residence may then be established."*

[20] The ordinary residence of the Claimant can be determined as established by paragraphs 1, 2 and 3 of his Affidavit filed on the 22nd of March 2022, where he stated:

> *"1. That I reside and have my true place of abode at 3466 Spring Bluff Place, Lauderhill, Fl,.33319 U.S.A. and I am the Claimant herein.*

2. That I am a Training Officer in the Company Cohen Klein Consulting Inc. which is also situated in Florida in the United States of America and I am a Director of the said Company.

3. That on the 19th day of August, 2011 I was visiting Jamaica and duly attended at the Norman Manley International Airport to facilitate my departure therefrom and whilst lawfully occupying a chair in the departure lounge the chair broke causing me to fall to the ground thereby injuring myself."

[21] The court must be satisfied that the conditions under ***rule 24.3*** of the CPR are met when considering an Application for security for costs. In the case at hand, I find that ***rule 24.3(a)*** has been satisfied, in that the Claimant is ordinarily resident out of the jurisdiction. A finding that has been accepted by both sides. Further, there is no evidence to the contrary provided or alluded to by either party. In fact, this finding is supported by the Claimant's affidavit (see paragraph 20 above) and stands as clear evidence that the Claimant ordinarily resides outside of the jurisdiction. The requirement of this rule has been met and requires no additional explanation.

[22] In deciding whether, having regard to all the circumstances of the case, it would be just to exercise the court's discretion in favour of making the order, I will rely on the guidance of Phillips JA in ***Symsure Limited v Kevin Moore [Supra]*** at paragraph 47, where the Judge of Appeal enuciated that:

"Once one or more of the factors stated in the rules have been satisfied, then the court must endeavour to ascertain whether it was just to make the order. The court ought to consider, though not in any great detail, the success of the claim, and also whether the order could stifle a genuine claim. The order clearly ought not to do that, however the defendant should not be forced to defend a claim that is a sham, and one in respect of which he may not be

able to recover his costs and unnecessary expenses if the claimant in the case is unsuccessful."

The Learned Judge of Appeal, Phillips JA went on to highlight several factors that can be gleaned from several cases over time to assist the court in determining whether it would be just to grant the order for security for costs. She stated at paragraph 44 in ***Symsure*** that:

> *"In Harnett, Sorrel and Sons Ltd v Smithfield Foods Limited, in reviewing The Supreme Court Practice, 1982, volume 1, page 435, Belgrave J, suggested that there are several factors which the court may take into account when considering applications for security for costs, namely:*
>
> *(1) Whether the plaintiff's claim is bona fide and not a sham.*
> *(2) Whether the plaintiff has a reasonably good prospect of success.*
> *(3) Whether there is admission by the defendant on the pleadings or elsewhere that money is due.*
> *(4) Whether there is a substantial payment into court or an "open offer" of a substantial amount.*
> *(5) Whether the application for security was being used oppressively so as to stifle a genuine claim.*
> *(6) Whether the plaintiff's want of means had been brought about by any conduct of by the defendant, such as delay in payment or in doing their part of the work.*
> *(7) Whether the application for security is made at a late stage of the proceedings."*

[23] Having considered the factors highlighted in ***Symsure*** and the arguments put forward by both parties it is necessary to examine what is just in the circumstances of this case. I will examine the factor of delay in filing. ***Rule 24.2 (2)*** of the CPR,

provides that such an application for security for costs ought to be made at the Case Management Conference or the Pre-Trial Review. The Applicants filed their Application to be heard before the Pre-Trial Review. The authority has stated that the court in exercising its discretion should have regard to the delay in making the application. If it is proven that there is delay by the applicants the court is likely to refuse an order for security for costs. This position was echoed by Phillips JA in ***Symsure***, where it was stated, at paragraph 48, that:

> *"Delay in making the application… is also a factor to be considered. As indicated, the application ought to be made at a very early stage of the proceedings. It has been said that lateness itself may be a reason to refuse the application, particularly if the application is made very close to the trial date and the sum asked for is exorbitant, or in any event, very high, as it may cause suspicion as to the genuineness of the claim."*

[24] In this case, the Notice of Application for Court Orders for Security for Costs was filed by the Applicants on the 26th of January, 2021, approximately eight (8) years after the claim was initiated, but before the Pre-Trial Review. In consideration of this evidence, it was agreed upon by counsel for the Applicants that there was some delay in filing the application, nevertheless, the delay should not be deemed as one that should block the Applicants' application being granted. Since, in accordance with the CPR, the application was made within the required timeline specified, I therefore, conclude that ***Rule 24.2(2)*** has not been breached.

[25] Even though I found that ***Rule 24.2(2)*** has not been breached, I must consider whether the lateness of the application, considering all the circumstances, can be viewed as a device intended to stifle the claimant's claim. As such, it is my duty nonetheless, to scrutinise the entire circumstances of the case to ascertain whether the application was intended to be used as an instrument of oppression, and to stifle the claim.

[26] From the start of the Claim in 2013, the Claimant had been residing abroad, his address from the outset for the purpose of these proceedings has not changed. The Applicants supplemental affidavit of Verona P. Vacinna in support of the application filed on the 13th May, 2022, speaks to bankruptcy proceedings from the United States pertaining to the Claimant. This document of bankruptcy proceedings is at paragraph 5. However, paragraph 6 of the said affidavit states:

> *"6. That the said copy documents confirm:*
>
> *(a) The existence of Bankruptcy Proceedings in respect of the Defendant, Keith Nethersole;*
>
> *(b) The fact that there was a confirmed plan for Keith Nethersole to perform in respect of the said proceedings;*
>
> *(c) That Keith Nethersole defaulted in performance under the plan; and*
>
> *(d) Keith Nethersole failed to make the required payments under the plan."*

[27] Further on 4th July, 2022 a supplemental affidavit was filed on behalf of the Applicants exhibiting an Investigator's Report marked "VPV-1". In this report, the applicants exhibited to the court several foreclosure proceedings in the Broward County Court of Florida, United States of America. The affidavit also asserts that the report discloses that the Claimant in 2010 allegedly suffered personal injuries in a motor vehicle accident. Also, one month later, the Claimant submitted a claim to an insurance company after allegedly falling into a hole. These are all factors and circumstances that the Applicants plead as warranting the grant for security for costs order. I must say the credibility that can be placed on the Investigator's Report is low at this stage. There is no way for the court to assess the proper weight to be given to this evidence. Additionally, the Claimant in response has stated that, and I concur, the document concerning the bankruptcy report has been

completed and all arrangements under the scheme were seemingly honoured as the document has been closed. While the bankruptcy proceedings may speak to the Claimant's impecuniosity, it also speaks to the Claimant's willingness to honour his obligations. Some of the incidents highlighted by the Applicants took place before 2013 and others by 2015. It begs to argue why the Applicants waited until 2021 to check and bring to the Courts attention the Claimant's impecuniosity, since at all times it was known that the Claimant resided outside of the jurisdiction. These circumstances at this stage make me question the genuineness of the claim, it does not automatically show that the aim of the application is to stifle the claim.

[28] At this stage, I am required to determine whether the claim is a sham or if it is genuine. While my duty at this juncture is not to determine the merit of the claim or whether the Claimant has a strong case to be litigated, I note, however, that the Claimant was injured whilst lawfully being at the Applicants' property. As such, the Applicants had a duty to provide safe furniture for use by persons occupying the space in question. The Claimant in this case, had provided medical reports indicating his injuries. The source of the injuries and the extent is a matter of fact to be determined by the Court at trial. The negligence of the Applicants is also a matter to be determined by the Court. I do not have any clear evidence before me to come to a finding that the claim is a sham. The case is likely to be determined on issues of credibility of the evidence presented. On the evidence before me, this does not appear to be a sham claim.

[29] In light of the abovementioned issues, I will now proceed to consider the factors of impecuniosity and absence of assets of the Claimant in the jurisdiction. It is recognized that before a court refuses an order for security for costs on the basis that it would unfairly stifle a valid claim, the court must be satisfied, that in all the circumstances, it is plausible that the claim will be stifled. This question can be unreservedly answered in the affirmative particularly since the Claimant himself has professed that an order requiring him to provide security for costs in the amount of $1,795,000.00 in the proceedings would severely affect his ability to continue advancing his claim. The affidavit of the Claimant filed on the 29th March,

2022 also averred that the amount of $1,795,000.00 is oppressive and was done in an attempt to stifle a genuine claim. At paragraphs 9 and 10, the Claimant stated:

> *9. This application for security for costs is an attempt to muzzle me. That as far as I can recall I travelled to Jamaica on about 5 occasions for mediation and it was only on one occasion when a paltry offer was made which I found insulting.*
>
> *10. That I am a still a home owner in Florida and I am operating a Business Cohen and Klein Consultants Inc which is known to the Defendants with a little savings of $6000.00 and receivables. That my accounts for the year 2021 will be ready in about 3 weeks when I will be in a position to make further disclosures.*
>
> *10. (sic) That I have not made any arrangements with anyone to pay my expenses but I admit that I do not own any property in Jamaica.*

[30] In the case at hand, the Claimant was visiting Jamaica presumably on vacation. It would be fair to say that he owns no property in Jamaica. More importantly, his financial status is not one that would enable him to satisfy a security for cost claim as high as the one being sought.

[31] The authorities have acknowledged that it is no longer an inflexible rule that persons who are ordinarily resident outside of the Jurisdiction and are impecunious must provide security for costs. Harris J (as she then was) in ***Nicholas Grant v G. Anthony Levy [2017] JMSC Civ 65***, relied on ***Shurendy Adelson Quant v The Minister of National Security and the Attorney General of Jamaica [2015] JMCA Civ 50***, in support of this point. Garnered from the authorities is that the Court should not make an order solely on the ground of the Claimant's impecuniosity. This is so since the Claimant should not be prevented from seeking justice through want of means to do so.

[32] The balancing exercise to be employed by the Court is important to the process in order to make a determination. The Court is obliged to consider whether the amount being sought by the Applicants is appropriate enough so as not to stifle the Claimant's claim. The Applicants, in justifying the sum sought for security for costs, provided a draft bill of costs in the affidavit in support of the Application at paragraph 7. ***Symsure*** highlights that the practice of setting out a bill of costs is in keeping with the authorities. ***Symsure*** relied on the authority of ***Procon (Great Britain) Ltd v Provincial Building Co. Ltd. [1984] 1 WLR 557***, which established that the amount should neither be illusory nor oppressive. ***Porzelack KG v Porzelack (UK) Ltd (Supra)*** made statements that the sum requested should not be one that will cause the Claimant to be driven from the judgment seat unless the justice of the case makes it imperative. I will adopt this guidance. Weighing the balance of justice in regard to the evidence placed before the court, and having regard to the type of case and the issues called upon to be determined, I find the amount sought by the Applicants to be exorbitant. Therefore, I am of the view that this case is not a complex matter and the issues to be determined are simple and straight forward. Additionally, on the face of it, this case does not raise or is likely to raise any novel questions of law.

[33] Consequently, when I consider all the circumstances of this case, as well as, taking into consideration all the relevant facts, I am satisfied that it would not be just to make the order for security for costs.

ORDERS

[34] Accordingly, it is ordered that:

1. The Applicants application for security for costs is refused.
2. Cost to be cost in the claim.
3. The Applicants/Defendants Attorneys-at-Law are to prepare, file and serve this order.
4. Leave to appeal is refused.