

**CITATION:** 2642948 Ontario Inc. v. Jonny’s Antiques Ltd. 2025 ONSC 3215  
**COURT FILE NO.:** CV-24-00003479  
**DATE:** 2025-05-29

**ONTARIO**

**SUPERIOR COURT OF JUSTICE (STRATFORD)**

**BETWEEN:** )  
 )  
2642948 Ontario Inc. )  
 )  
Plaintiff (Defendant to the Counterclaim) ) Manuela Jimenez Bueno, for the Plaintiff  
 ) (Defendant to the Counterclaim)  
 )  
– and – )  
 )  
Jonny’s Antiques Ltd. )  
 )  
Defendant (Plaintiff by Counterclaim) ) David Johnson, for the Defendant (Plaintiff  
 ) by Counterclaim)  
 )  
 )  
 )  
 )  
 )  
 )  
 ) **HEARD:** In Writing

**JUSTICE E. TEN CATE**

**DECISION ON COSTS**

**Introduction**

[1] On April 2, 2025, I released my reasons for decision in this matter which included an order that the costs of both motions are payable by the Defendant to the Plaintiff. I then invited the parties to make submissions on costs, which were received by April 29, 2025.

[2] This action arises out of the Defendant’s purchase of corporate shares financed by a vendor take-back mortgage from the Plaintiff.

[3] Two motions were argued: (1) the Defendant’s motion granting leave to issue and register a certificate of pending litigation (“CPL”), and a declaration that the Defendant is in possession of the property; and (2) the Plaintiff’s motion setting aside the *ex parte* order of Cook J. dated May 14, 2024, vacating the CPL, and declaring the Plaintiff is in possession of the property.

[4] Subsequent to my decision, the Defendant sought a stay pending appeal from the Court of Appeal which was denied on May 16, 2025.<sup>1</sup> The property, which is the subject of these proceedings, has been sold to a third party.

### **Costs Positions**

[5] The Plaintiff seeks costs of the motions on a full indemnity basis in the sum of \$83,738.50 including HST plus disbursements of \$15,251.23 for a total of \$98,989.73.

[6] The Defendant seeks an order that each party shall bear their own costs, or in the alternative, that costs be reduced significantly on a partial indemnity basis.

### **Analysis**

[7] The general rule is that a successful party is entitled to costs on a motion. The overall objective is to fix an amount that is fair and reasonable for the unsuccessful party in the circumstances.<sup>2</sup>

[8] Section 131(1) of the *Courts of Justice Act*<sup>3</sup> sets out the court's general discretion to award costs as between parties to litigation. Rule 57.01(1) of the *Rules of Civil Procedure*<sup>4</sup> sets out a non-exhaustive list of factors to be considered in awarding costs, including the time spent, the result achieved, the complexity of the issues raised, the conduct of the parties, and any other matter relevant to the question of costs.

[9] In 2005, significant amendments were made to Rule 57. In addition to abolishing the "costs grid", the list of factors in Rule 57.01(1) was expanded to include the principle of indemnity (Rule 57.01(1)(0.a)) and the reasonable expectation of the unsuccessful party (Rule 57.01(1)(0.b)). Additionally, Rule 57.01(4) was amended to make it clear the court may award costs in an amount which represents full indemnity (Rule 57.01(4)(d)) and may award costs to a party acting in person (Rule 57.01(4)(e)).

[10] Contractual provisions stipulating entitlement of a mortgagee to costs of enforcement based on costs actually expended is recognized by the courts absent misconduct or unfairness on the part of the party claiming costs.<sup>5</sup> An award of costs on a partial indemnity basis in the face of such a contractual provision has been found to be an error in principle.<sup>6</sup>

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<sup>1</sup> 2642948 *Ontario Inc. v. Jonny's Antiques Ltd.*, 2025 ONCA 381.

<sup>2</sup> *Boucher v. Public Accountants Council for the Province of Ontario* (2004), 71 O.R. (3d) 291 at para. 26.

<sup>3</sup> *Courts of Justice Act*, R.S.O. 1990, c. C.43.

<sup>4</sup> *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, made under the *Courts of Justice Act*, *Ibid.*

<sup>5</sup> *Everest Finance Corporation v. Jonker*, 2023 ONCA 146.

<sup>6</sup> *MCAP Financial Corp. v. George Fericola in Trust et al.*, 2010 ONSC 148, at para. 18.

[11] In my view, the Defendant ought to have expected to pay full indemnity costs pursuant to Rule 57.01(1)(0.b) because Section 8 of the Standard Charge Terms contained within the Mortgage Charge registered on title on July 11, 2018, grants the Plaintiff “legal fees (*as between solicitor and client*) and expenses which may be incurred in taking, recovering and keeping possession of the land and of negotiating the Charge, investigating title, and other necessary deeds, *and generally in any other proceedings taken in connection with or to realized upon the security given in the Charge....*”. [My emphasis].

[12] However, Rule 57.01(1)(0.b) is only one of the factors to be considered. *Boucher v. Public Accountants Council for the Province of Ontario*<sup>7</sup> makes it clear that the court has an overarching obligation to fix costs in an amount that is “fair and reasonable”.

[13] I have reviewed the Bill of Costs submitted by the Plaintiff. In my view, the costs sought are unreasonably high for several reasons:

- According to my order, costs of the interim *motions* are payable by the Defendant, but the Bill of Costs included costs associated with the underlying *action*, including items such as pleadings, advertising to newspapers, preparation of the agreement of purchase and sale and indemnification agreement, etc.
- Three lawyers were listed on the Bill of Costs, whose time overlapped significantly. In total, they spent 233.5 hours, an exorbitant amount of time to spend on two motions even with cross-examinations on affidavits.
- With no disrespect to Ms. Jimenez, she was called to the bar in 2024 and therefore had approximately one year of experience at the time the motions were argued. Her time alone was 144 hours, billed out at \$250 per hour (92.95 hours) and then \$280 per hour (51.35 hours).
- Ms. Jimenez’ work was reviewed by *two* senior lawyers.
- Mr. Martin Mahlstedt billed a total of 66.85 hours at \$425 per hour which included work associated with the sale of the property such as phone calls to third parties such as Ontario Hydro and the potential buyer of the property.
- The entries associated with the law and articling students, billed out at \$140 per hour and \$175/\$190 per hour respectively, appeared to deal with the sale of the property as opposed to the motions themselves.

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<sup>7</sup> *Ibid.*

[14] For the reasons above, I have discounted the amount of fees sought and award the Plaintiffs the sum of \$25,000 plus HST of \$3,250 for a total of \$28,250.

[15] I was provided with no breakdown of the disbursements which also appear to be excessive. I am prepared to award the sum of \$5,000 for disbursements representing filing fees for the motions, disbursements associated with attendances at cross-examinations, and transcripts.

[16] The total cost award for the motions is therefore \$33,250 payable by the Defendant to the Plaintiff.



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Justice E. ten Cate

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Defendant (Plaintiff by Counterclaim)

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**DECISION ON COSTS**

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ten Cate J.

**Released:** May 29, 2025