

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

ROYAL BANK OF CANADA

Plaintiff

– and –

1108135 ONTARIO INC. OPERATING
AS TRENDS DÉCOR AND ROGER
ALONZO

Defendants

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) Amanda McInnis for the Plaintiff
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) Emraan Dharsi for the Defendants
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) **HEARD:** In writing

COSTS DECISION

JUSTICE L. SHEARD

Overview

- [1] The plaintiff, Royal Bank of Canada (“RBC”), moved for summary judgment as against the defendants in respect of (a) a Business Operating Line (the “BOL”) and (b) a Visa Credit Card #xxxx-xxxx-0558 1003 (the “VISA”).
- [2] RBC claimed:
- a) \$10,615.46, plus interest on that amount from January 3, 2025, at the rate of 8.950% per annum in respect of the BOL (the “BOL Debt”); and
 - b) \$57,844.23, plus interest on that amount from November 25, 2024, at the rate of 19.990% per annum in respect of the VISA (the “VISA Debt”).
- [3] At the hearing, the corporate defendant, 1108135 Ontario Inc. operating as Trends Décor (“135 Ontario”), admitted liability for the amounts claimed by RBC, except for the costs claimed. On that basis, judgment was granted as against 135 Ontario.

- [4] The defendant, Roger Alonzo, is the sole shareholder, director, and operator of 135 Ontario. Mr. Alonzo denied that he agreed to be personally liable with 135 Ontario for either debt.
- [5] RBC's motion materials addressed its entitlement to the amounts claimed as against both defendants; aside from the costs claimed, neither 135 Ontario nor Mr. Alonzo disputed the accuracy of the amounts RBC claimed owing on the BOL Debt and the VISA Debt. As a result, the focus of the oral hearing was on whether Mr. Alonzo was personally liable with 135 Ontario.
- [6] In Reasons for Judgment released on June 9, 2025, the parties were found liable as follows:
- (a) 135 Ontario was found liable to pay the BOL Debt and the VISA Debt; and
 - (b) Mr. Alonzo was found liable with 135 Ontario to pay the BOL Debt but was found *not* to be liable on the Visa Debt.
- [7] Based on my calculations, the judgment amounts as of June 9, 2025, were as follows:
- i) in respect of the BOL Debt: **\$11,024.13**, calculated as follows: \$10,615.46, plus prejudgment interest from Jan. 3 to June 9, 2025, in the approximate amount of \$408.67 (157 days @ \$2.6/day).; and
 - ii) in respect of the VISA Debt: **\$63,895.04**, calculated as follows: \$57,844.23, plus prejudgment interest from November 25, 2024 to June 9, 2025, in the approximate amount of \$6,050.81 (191 days @ \$31.68/day). 135 Ontario was liable to pay the VISA Debt; and
 - iii) post-judgment interest on the judgment amounts at the rates set out in the respective BOL and VISA Agreements, payable by the defendant(s) liable.

Position of the Parties on Costs

- (i) *RBC*
- [8] According to the Bill of Costs filed, RBC incurred \$26,473.64 in fees and HST, \$1,099.33 in disbursements and HST, a total of \$27,568.97 in respect of the motion for summary judgment.
- [9] The credit documents entitle RBC to its costs on a substantial indemnity basis, in its costs submissions. However, to "account for the partial success obtained by Mr. Alonzo", RBC seeks a cost award against both defendants in the total amount of \$11,475.35, an amount less than one-half of the costs actually incurred by RBC on the motion.

(ii) *Defendants*

- [10] 135 Ontario agrees that RBC is entitled to costs on a substantial indemnity basis but submits that the costs awarded against it should be fixed at \$6,500.00.
- [11] 135 Ontario takes the position that it never opposed RBC's motion for summary judgment and admitted liability in its factum and that it should be liable *only* for the costs incurred by RBC up to March 20, 2025. 135 Ontario submits the time spent by RBC's counsel after that date, including the preparation of a supplementary affidavit and factum, and the time spent at the hearing, related to RBC's unsuccessful claim against Mr. Alonzo.
- [12] Mr. Alonzo submits that as he was successful in defending the larger of RBC's two claims against him, he achieved overall greater success on the motion than RBC. As such, he claims that he is entitled to his costs of successfully defending the claim on the VISA Debt, in the amount of \$16,135.45.
- [13] In support of this submission, Mr. Alonzo relies upon *Fram Elgin Mills 90 Inc., Romandale Farms Limited*, 2021 ONCA 381 ("*Fram*"), at para 10., at which the Court stated:
- Costs are not to be determined by considering success on an issue by issue basis. Rather, they are to be based on the overall success achieved by a party: *Wesbell Networks Inc. v. Bell Canada*, 2015 ONCA 33 (CanLII) ("*Wesbell*"), at para. 21.
- [14] In *Wesbell*, in considering a costs appeal, the Court noted that the trial judge had determined that each party had success on a significant issue: one respecting set-off and the other concerning the rate of interest to be charged and, on the basis that each party was "either equally successful, or equally unsuccessful" there should be no order as to costs" (at para. 19).
- [15] The Court set aside the trial judge's costs order, concluding that the "trial judge erred in focusing on individual issues in the litigation and disregarding the overall success achieved by" the plaintiff which received judgment in excess of \$1 million (*Wesbell*, at para 21.)
- [16] At para. 22, the court reiterated: [T]he general rule is that, absent exceptional circumstances, a successful party is entitled to its costs of a proceeding.
- [17] Mr. Alonzo's alternative submission is that, should the court determine costs on an issue-by-issue basis, rather than looking at the overall success achieved by a party, he should be awarded \$13,715.13 (\$16,135.45 x 85%). The amount reflects the relative success of Mr. Alonzo against RBC: Mr. Alonzo defended 85% of RBC's claim as against him.

The Law and Analysis

- [18] Based upon my review of the materials before the court and RBC's Bill of Costs, I largely accept the submissions of 135 Ontario that the time spent by RBC after March 20, 2025, was primarily related to RBC's claim against Mr. Alonzo.

- [19] However, I note that 135 Ontario and Mr. Alonzo were represented by the same counsel and jointly defended the RBC claim in their Fresh as Amended Statement of Defence of the Defendants dated and served on April 9, 2025. I also note that in that pleading, 135 Ontario did not admit liability and at paragraph 9., both defendants ask, “that the action be dismissed as against them with costs.”
- [20] While I also accept that in their factum, dated and served on May 13, 2025, the defendants admit that 135 Ontario is liable to pay the BOL Debt and the VISA Debt, the factum was served long after the RBC’s motion was served and is the first time the defendants admit that 135 Ontario is liable.
- [21] I also note that in their factum, both defendants disputed RBC’s entitlement to costs on a substantial basis, which was later admitted in the defendants’ Costs Submissions.
- [22] The RBC acknowledges that it had mixed success and reduced its claim for costs to account for Mr. Alonzo’s partial success.
- [23] The overall objective of the court is to fix costs in an amount that is fair and reasonable, having regard for, among other things, the expectations of the parties concerning the quantum of costs: *Boucher v. Public Accountants Council for the Province of Ontario* (2004), 71 O.R. (3d) 291 (C.A.) at paras. 26 and 38.
- [24] I find that overall, RBC was the party with the greater success when it obtained judgment in the full amount against 135 Ontario and partial judgment against Mr. Alonzo. When I apply the principles found in *Fram* and *Wesbell*, I cannot accept Mr. Alonzo’s submissions which, in my view, would require this court to determine costs on an issue by issue basis.
- [25] Overall, the plaintiff was successful and is entitled to costs.
- [26] In their Costs Submissions, the defendants state that Mr. Alonzo’s partial indemnity costs to resist RBC’s motion are \$16,135.45. Using his stated percentage of 65% of full indemnity fees, the actual fees incurred by the defendants on and after March 20, 2025, would total approximately \$24,650.00. This amount is close to the fees incurred by the RBC for the entire motion.
- [27] When compared to the costs incurred by RBC, I find that the costs claimed by Mr. Alonzo for the motion to be excessive. I also note that included in that amount is three hours for attending court on April 17, 2025. That court appearance was necessitated because the defendants opposed an adjournment sought by RBC. The adjournment was granted, with costs reserved to the motions judge. As the motions judge, I find that RBC, not the defendants or Mr. Alonzo, is entitled to the costs of that attendance.
- [28] A costs award should reflect what the court views as a fair and reasonable contribution by the unsuccessful party to the successful party rather than any exact measure of the actual costs to the successful litigant: *Zesta Engineering Ltd. v. Cloutier*, 2002 CanLII 25577 (ON CA), 2002 CarswellOnt 4020, 118 A.C.W.S. (3d) 341 (C.A.), at para. 4; *Fehr et al. v. Sun Life Assurance Company of Canada*, 2021 ONSC 8368 (*CanLII*), at para 83).

[29] Section 131(1) of the *Courts of Justice Act*, R.S.O.1990, c. C.43 gives the court the discretion to determine by whom and to what extent costs are to be paid. Rule 57 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 lists the factors to be considered in the exercise of that discretion including the amount of costs that an unsuccessful party could reasonably expect to pay for the step in the proceeding for which costs are being fixed.

Disposition

[30] Exercising my discretion and applying the applicable principles, I find that the costs claimed by RBC are fair and reasonable and within an amount that the defendants could reasonably expect to pay for the summary judgement motion.

[31] I therefore accept RBC's Costs Submissions and fix RBC's costs of the summary judgment motion at \$11,475.35, all inclusive, payable by the defendants, jointly and severally.

Justice L. Sheard

Released: June 30, 2025

CITATION: RBC v. 1108135 Ontario Inc. et al., 2025 ONSC 3879
COURT FILE NO.: CV-24-87698
DATE: 2025/06/30

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COSTS DECISION

Sheard, J.

Released: June 30, 2025