CITATION: Ang v. Ang, 2025 ONSC 3563
COURT FILE NO.: CV-22-676612-00CL
DATE: 20250616

SUPERIOR COURT OF JUSTICE – ONTARIO
(COMMERCIAL LIST)

RE: David Ang

AND

Mark Ang

BEFORE: W.D. Black J.

COUNSEL: *F. Scott Turton*, for the plaintiff and defendants by counterclaim

Richard Swan and Alexander C. Payne, for the defendant/plaintiff by Counterclaim Bolt Technologies Incorporated formerly known as Second Closet Incorporated

Gabriel Latner, for the defendants Mark Ang and Mark Ang Holdings Inc.

HEARD: In-Writing

ENDORSEMENT

[1] In my endorsement in this matter dated May 7, 2025, following a nine-day trial and two days of argument, I dismissed David Ang's claim against his brother Mark Ang and the company Bolt Technologies Incorporated (in this endorsement I will follow the practice established in my May 7 endorsement of referring to David Ang as "David" and to Mark Ang as "Mark" and will use other short forms adopted in that decision).

[2] I also granted Bolt's counterclaim and awarded damages payable by David, Send Canada and Send U.S., as well as punitive damages payable by David.

[3] In the May 7 endorsement, I directed that if the parties were unable to agree on costs, they should exchange and file written submissions of a length and on a schedule set out therein.

[4] I have received the parties' respective submissions on costs, and what follows is my decision on the cost issues.

[5] The starting point for this analysis is my finding in the May 7 endorsement that Mark and Bolt, as the successful parties, were entitled to their costs, such that the issues remaining to be determined are as to the scale and quantum of costs.

[6] In terms of the scale of costs, both Bolt and Mark seek costs on a full indemnity basis.

[7] The basis for the proposed scale is multifold, and includes David's conduct around the time of his departure from Bolt, his fabrication and forgery of the June 2017 Letter, his breach of the Witness Exclusion Order during the trial, and various other aspects of David's conduct, all as detailed in the May 7 endorsement.

[8] Bolt also relies on David's refusal of offers to settle, which they assert would have yielded a more favourable outcome for David than the outcome at trial.

[9] The offers on which Bolt relies are:

(a) An offer made on September 1, 2021 by which Bolt offered to settle the litigation by purchasing David's shares in Bolt for a total of $6,843,715.00;

(b) An offer made at the pre-trial conference, premised on avoiding the costs of trial, to settle the litigation on the basis of an all-inclusive payment to David of $250,000.00, a dismissal of the claim against Bolt and the counterclaim being dismissed without costs, and with David being expressly permitted to pursue his claims against Mark; and

(c) A Rule 49 offer on January 30, 2025 (again premised on a wish to avoid the costs of trial) of an all-inclusive payment to David of $125,000.00, with the claim against Bolt and the counterclaim being dismissed without costs, and with David again being expressly permitted to pursue his claims against Mark.

[10] David did not accept any of these offers. The Rule 49 offer was withdrawn on February 25, 2025, following David's continued examination for discovery on February 24, 2025, during which David resiled under oath from his insistence on the genuineness of the signatures on the June 2017 Letter.

[11] Bolt acknowledges that none of these offers technically engages Rule 49.10. However, they reference such cases as *Bricies Wigle v. Vanderkruk*, 2005 CanLII 30884 (ON SC), in which, in like circumstances, Harris J. noted a series of offers by the plaintiff that "were all effectively ignored by the defendant" and, in determining to "allow complete indemnification for the plaintiff's legal costs" said (at para. 7): "the defendant's case at trial was manifestly unsuccessful and the amount awarded was significantly greater than the plaintiff's offers. As well, punitive damages were awarded against the defendant."

[12] The parallels between that case and this one are evident. I would add that Rule 49.13 allows me latitude to take into account offers not strictly compliant with the provisions of Rule 49 triggering higher scales.

[13] Mark's submissions on costs largely echo those of Bolt.

[14] Mark adds, among other things, that the defendants repeatedly attempted to expedite the disposition of the litigation, including by bringing a Rule 21 motion (before Kimmel J.). Likewise, Mark attempted to schedule a summary judgment motion. While these efforts were unsuccessful, Mark points to them as evidence of his effort to bring these matters to conclusion. Mark also notes that his counsel and counsel for Bolt cooperated closely and shared and divided various tasks, including research, trial preparation, and drafting submissions.

[15] After repeating some of Bolt's observations about the basis for full indemnity costs, Mark asks rhetorically: "If this is not a case where full indemnity costs are warranted, what is?"

[16] It is difficult to gainsay that proposition.

[17] As will be evident from my May 7 endorsement, I was troubled in particular by David's conduct relative to the June 2017 Letter, but those concerns were compounded by David's breach of the Witness Exclusion Order, and by other aspects of David's evidence and behaviour as detailed in my trial decision. It will also be evident in my decision, I expect, that I attribute some of David's woeful judgment to his age and to the emotion associated with a fight between siblings, but these factors cannot and do not excuse David's problematic behaviour, and I need to consider that behaviour dispassionately in assessing the appropriate scale of costs.

[18] In his submissions on costs, David does not particularly engage with these problematic aspects of his conduct.

[19] He says, with respect to Bolt's Rule 49 offer described in paragraph 9(c) above, that it had been his intention to accept that offer but that the offer was withdrawn before he was able to do so, and "hence a trial proceeded that could have been avoided." While that is unfortunate, it is also probably fair to observe that David must have known before being examined on February 24 that he was going to back away from his reliance on the June 2017 Letter, such that it would have been prudent for him to accept the offer by no later than that day. In any event, it seems a slippery slope to evaluate costs consequences on the basis of a party's unfulfilled intentions.

[20] Apart from this assertion, David observes that he does not perceive Bolt to be seeking its cost of the counterclaim against the Send companies and therefore submits that no costs should be ordered against those entities.

[21] David also refers to Bolt and Mark's unsuccessful procedural gambits, asserting that there should be no costs for the defendants relative to a motion by the defendants seeking to find David in contempt of the order of B. Dietrich J., no costs for case conferences (at which, David argues, Bolt and Mark unsuccessfully attempted to "sever the case into segments") and no costs referable to David abandoning, in the weeks before the trial, various "legally inapplicable or non-existent cause of action" (which David's trial counsel had "inherited" from David's previous counsel, and which he properly jettisoned).

[22] Otherwise, David's submissions take issue with the number of hours claimed by counsel for the defendants (particularly given the overlap between the co-defendants' positions) and with the hourly rates claimed for those hours.

[23] The force of these submissions on the number of hours spent and the hourly rates charged is substantially attenuated by the fact that David did not, in conjunction with delivering these submissions, also provide his own costs outline. While there is no specific obligation to do so, and while in my May 7 endorsement I specifically said, in respect of David and the Send companies, that "These parties may choose whether or not to include a costs outline together with their submissions", the claim that the hours spent by opposing counsel was excessive rings a little hollow in the absence of a comparative tally of hours spent on David's behalf.

[24] I note that David's costs submissions are a little on the "thin" side, and I suspect that David may have elected, in this setting, to avoid "throwing good money after bad". That said, I am only able to base my determination on the materials and arguments put before me, and, again, the absence of a costs outline from David in large part undermines his arguments about the alleged excesses on the part of counsel opposite.

[25] The costs sought by Mark (and Mark Ang Holdings), on a full indemnity scale, total $540,865.39, inclusive of HST and disbursements. Mark points out that this amount claimed for costs is approximately 0.67% of the $80 million claimed by David.

[26] Bolt, for its part, claims a total of $1,826,449.21 on a full indemnity basis, including HST (of $202,462.85) and disbursements (of $66,629.86).

[27] Interestingly, despite taking issue with these totals, David does not expressly argue for a scale of costs other than full indemnity.

[28] In their respective reply submissions, Mark (and Mark Ang Holdings) and Bolt take issue with various aspects of David's submissions. While most of those responses are subsumed in what I have noted above, Bolt confirms in its reply submissions that it seeks to have 10% of the overall costs award payable by Bolt, and effectively counters a suggestion in David's submissions that, given the damages I have awarded in the counterclaim, the counterclaim should have been pursued under the Simplified Rules.

[29] On this latter point, Bolt points out that the award against Send itself totals over $200,000.00. I would add that it would be odd and I suspect unwieldly to pursue a counterclaim as a Simplified Rules claim within a proceeding in which the main claim seeks $80 million.

[30] In any event, having considered the various parties' submissions on costs, I conclude as follows:

(a) The costs payable by David should be on a full indemnity scale;

(b) The portion of costs payable by Send should be on a partial indemnity scale;

(c) The overall costs payable by David and Send to the defendants/plaintiff by counterclaim total $2,178,814.60. This figure is comprised of the total of the amounts claimed by the two sets of defendants, being $2,367,814.80, less roughly one half of the amounts claimed for three interlocutory motions and for various case conferences. I take that deduction on the basis that the outcomes of those various attendances is not entirely clear to me (such that it does not seem appropriate to simply allow all of those costs to the defendants).

(d) Of that total amount payable, 90% is to be paid by David on a full indemnity scale, and 10% is to be paid by Send on a partial indemnity scale which, for ease of calculation, is to be on the basis of 50% of full indemnity (such that Send is to pay 50% of 10% of the overall total).

[31] These costs, together with the damages ordered, are to be paid within 30 days of the date of release of this decision.

W.D. BLACK J.

DATE: June 16, 2025