

COURT OF APPEAL FOR ONTARIO

CITATION: James Bay Resources Limited v. Mak Mera Nigeria Limited, 2025
ONCA 530
DATE: 20250716
DOCKET: COA-24-CV-0045

Gillese, Roberts and Coroza JJ.A.

BETWEEN

James Bay Resources Limited

Plaintiff (Respondent)

and

Mak Mera Nigeria Limited a.k.a. Mak Mera Limited and
Adewale Olorunsola a.k.a. Wale Sola

Defendants (Appellants)

Darryl A. Cruz and Audrey-Anne Delage, for the appellants

Hilary Book and William McLennan, for the respondent

Heard: January 20, 2025

On appeal from the judgment of Justice Eugenia Papageorgiou of the Superior Court of Justice, dated December 4, 2023, with reasons reported at 2023 ONSC 6844.

COSTS ENDORSEMENT

[1] On June 20, 2025, we released our decision allowing the appellants' appeal.

We found that the trial judge had erred by: 1) requiring the appellant, Mak Mera Limited ("Mak Mera"), to repay the respondent the amount of US\$405,000, which we concluded she had incorrectly characterized as advances under the parties'

agreement (“the contractual claim”); and 2) awarding the respondent, James Bay Resources Limited (“James Bay”), \$200,000 in damages for defamation. The appellants did not appeal from the trial judge’s determination that they had defamed James Bay. We awarded the appellants costs of the appeal in the agreed upon amount of \$50,000.

[2] We invited the parties, if they could not agree, to provide brief written submissions on the disposition of the trial costs. We have received and reviewed those submissions.

[3] The trial judge had awarded James Bay the all-inclusive amount of \$309,401.91. This award reflected James Bay’s success on its contractual claim against Mak Mera and its defamation claim against both appellants and gave effect to James Bay’s offer to settle. It also represented a reduction of James Bay’s claimed costs of \$607,759 because of the dismissal of its contractual claim against the individual appellant, Wale Sola, a deduction for amounts claimed for corporate counsel, James Bay’s conduct that the trial judge found unnecessarily increased costs, and the application of the proportionality principle having regard to the total damages award of \$605,000.

[4] The appellants seek payment of the trial costs from James Bay in the amount of \$551,361.87 and argue that James Bay should receive no costs for its successful defamation claim because of the nominal damages substituted on

appeal. Alternatively, they submit that they should receive \$413,000 (75% of their trial costs) and James Bay should receive \$77,350.48 (25% of its trial costs). James Bay contends that the trial judge's award of costs should stand and that the appellants should receive no costs. Alternatively, James Bay submits that it should be awarded \$50,000 for its trial costs which would offset the costs awarded to the appellants on the appeal.

[5] We award trial costs to the appellants, payable by James Bay, in the all-inclusive amount of \$400,000. Having regard to the appeal outcome, James Bay's limited success on its defamation claim, its claimed costs at trial and the reductions made by the trial judge, we conclude that \$400,000 represents an amount for the trial costs that is fair, reasonable and proportionate and within the reasonable contemplation of the parties.

"L.B. Roberts J.A."
"E.E. Gillese J.A."
"S. Coroza J.A."