

[5] Thus, the plaintiff had paid the total amount of \$67,600.22.

[6] An issue arose over the delivery of the keys. Ultimately, the transaction did not close although the plaintiff had paid all the funds because the plaintiff, through his counsel, took the position that the Church had breached the agreement by failing to deliver the keys to the plaintiff's lawyer in Toronto. The plaintiff's lawyer refused to register the transfer.

[7] The plaintiff sued the Church claiming rescission, and also for damages in the amount of \$58,600.22 which was the balance he paid on closing, recovery of the \$9,000 deposit, plus reimbursement of \$2,878.13 in legal fees paid to his lawyer. He also sued the Church's lawyer, Mr. Lehoux.

[8] The Church counterclaimed for specific performance or damages.

[9] On April 16, 2020, the Church sold the property for \$80,000, which was \$15,000 more than the purchase price with the plaintiff.

[10] The Church had damages that had crystalized as of the date it resold the property in the approximate amount of \$25,000. Because of the resale price which was \$15,000 more than the purchase price with the plaintiff, even if the Church had proven all of its damages, the most it would have been entitled to was \$10,000.

[11] On July 8, 2020, the Church made a without prejudice offer to return \$57,600.22 to the plaintiff in exchange for a release, even though the most it would have been entitled to if it proved all of its damages was \$10,000. Essentially, it was offering the plaintiff money that the plaintiff would have been entitled to in any event, even if the Church proved all of its damages.

[12] The plaintiff did not accept this offer and the Church held these funds until trial.

[13] The Church indicated that it had kept the plaintiff's money in trust for him which made little sense because it was the plaintiff's money and the Church asserted no claim to \$57,600.22 of it.

[14] It argued that keeping the money in trust was the same thing as paying it into court. I disagree. This was the plaintiff's money, and so the defendant was not entitled to keep it. The plaintiff was entitled to do whatever he wanted with his own money.

[15] I calculated the Church's damages to be \$15,219.61. Since it had sold the property for \$15,000 more than the amount the plaintiff paid, I awarded damages in the amount of \$219.61.

[16] I dismissed the case against Mr. Lehoux.

[17] All of the parties claim their costs.

[18] The plaintiff claims its full costs in the amount of \$34,253.50 or its partial indemnity costs in the amount of \$17,116.27. He has not provided what the substantial indemnity amount is but it is typically 80 %.

[19] The Church claims its partial indemnity costs in the amount of \$50,163.45.

[20] Mr. Lehoux claims his costs on a substantial indemnity basis in the amount of \$60,540.99.

Costs as Between the Plaintiff and the Church

[21] Both parties were successful.

[22] The plaintiff succeeded on his claim and was awarded \$70,142.23.

[23] The Church also succeeded on its counterclaim in the amount of \$219.61.

[24] Overall, the plaintiff was the more successful party, even though I found he breached the agreement.

[25] Therefore, the plaintiff is presumptively entitled to his costs.

[26] I also award him his costs because the Church held onto \$57,600.22 of the plaintiff's money for all these years when it asserted no claim to these funds as of the time it resold the property. After that point in time, that the highest damages it could be awarded was \$10,000 taking into account the fact that its damage claim was approximately \$25,000 and it had resold the property for \$15,000 more than the sale price to the plaintiff.

[27] While it may not have been deliberate, the practical effect of the offer made by the Church was that it was using the plaintiff's own money as leverage to try to obtain a settlement equal to the full damages that it asserted, damages that I found were not owed in full. When the plaintiff would not agree, the Church simply kept money that it knew it had no claim to.

[28] If the Church was finding the plaintiff to be difficult to deal with, it should have sought to pay the funds into court. A judge hearing that motion would have likely seen that the only party who claimed any entitlement to the \$57,600.22 was the plaintiff and would have likely ordered that it be paid to the plaintiff. This may have de-escalated the mounting conflict.

[29] Nevertheless, these facts do not entitle the plaintiff to full indemnity costs which are reserved for cases where a party has engaged in misconduct such as bad faith fraud or egregious behavior.

[30] These facts would not even entitle the plaintiff to substantial indemnity costs which are "rare and exceptional" and only warranted where there has been reprehensible, scandalous or outrageous conduct on the part of a party": see *DUCA Financial Services Credit Union Ltd. v. Bozzo*, 2010 ONSC 4601, at para. 5; *Foulis v. Robinson* (1978), 21 O.R. (2d) 769 (C.A.); and most

recently *Mars Canada Inc. v. Bemco Cash & Carry Inc.*, 2018 ONCA 239, 140 O.R. (3d) 81, at para. 43.

[31] It appears to me that this was a good faith mistake by the Church because the Church did keep these funds in an interest-bearing account and was under the mistaken impression that this was the same thing as seeking to pay the money into court. The confusion may have resulted from the fact that it was initially seeking specific performance.

[32] The Church explains that at no point prior to trial did the plaintiff ever make a request to disburse the funds, not even at three case conferences or at the pretrial or after he retained counsel. The endorsements also do not reflect any such request although there is one endorsement in 2022 which reflects some proposal that a portion of the proceeds be paid to the plaintiff and that a further case conference be held to explore this but it appears this did not happen. Apart from the one endorsement in 2022 which seems to have suggested this, none of the other judges that have presided over case conferences raised this issue.

[33] I add that some of the positions the plaintiff took in this proceeding were unreasonable and appear to have contributed to the parties' inability to resolve this matter.

[34] The plaintiff insisted on 28 % interest throughout on whatever the settlement was, even though he never produced any documents that showed he was entitled to this amount. Even the documents he produced on the first day of trial, which I did not admit for the reasons set out in my decision, did not reflect a 28 % interest rate. They showed that the plaintiff paid between 4.45 and 7.7 per cent over the last several years on his line of credit. I note that the plaintiff kept claiming 28 % but then refused to provide any support until the opening of trial which was too late.

[35] After he retained counsel, he made an offer to settle in March 2024 for \$170,000. The plaintiff made a further offer to settle on February 16, 2025 for \$210,000. These were unreasonable and he certainly did not beat these offer. The Church did try to negotiate and its communications reflect a reasonable and moderate approach in an attempt to resolve this matter, even if it withheld the plaintiff's money.

[36] There is also evidence that the plaintiff conducted himself inappropriately at times which may have prevented a resolution. For example, his response to the Church's request for his Defence to Counterclaim was:

“You must be stupid lawyer. Don't you know your work. I'm not going to coach you to your work. Have a good day.”

[37] Some of the plaintiff's conduct also caused the parties to incur costs and caused delays.

[38] The plaintiff did not provide a Defence after the request from the Church and was then noted in default. He took no steps for several months.

[39] After the parties conducted discoveries, they appeared before Justice Dineen on May 19, 2020 where the default judgment was set aside and the trial scheduled for April 29, 2024.

[40] The plaintiff retained counsel and at his request the trial was adjourned to December 2024. The trial was again adjourned at the request of the plaintiff to complete the preparation of evidence to be used at trial.

[41] While I do award the plaintiff his costs on a partial indemnity basis as against the Church, I reduce them to \$15,000 to reflect some of the plaintiff's conduct that increased costs and caused delay.

Costs as between the plaintiff and Mr. Lehoux

[42] I dismissed the case against Mr. Lehoux.

[43] He is presumptively entitled to his costs.

[44] He claims costs against the plaintiff in the amount of \$60,540.99 plus disbursements in the amount of \$637.49 on a substantial indemnity basis.

[45] Mr. Lehoux references offers to settle he made as follows:

- An offer he made on July 29, 2020 that the action be dismissed against Mr. Lehoux.
- An offer he repeated on October 29, 2024 that the action be dismissed without costs.
- An offer he made on December 5, 2024 that Mr. Lehoux would pay the plaintiff damages in the amount of \$10,000 inclusive of all damages, costs and interest
- An offer he made on January 10, 2025 to settle the action for \$21,00 plus 50 % of assessable disbursements and 50 % of costs to be agreed upon or assessed.

[46] He has beaten his last two offers and obtained an outcome that is at least as favourable as his first two offers.

[47] Therefore, he is entitled to his costs on a substantial indemnity basis, but the quantum claimed is grossly disproportionate to the matters at issue, particularly for Mr. Lehoux who has always maintained that it is trite that an opposing lawyer owes no duty of care to the opposite party. The case as against Mr. Lehoux and his defence, were not complex.

[48] Mr. Lehoux's trial affidavit was 6 pages long without exhibits. This is a simplified procedure matter and so the discovery could not have taken longer than 3 hours per person. His book of authorities contained five cases. His affidavits of documents contained a total of 27 documents which appeared to be his real estate file.

[49] This maximum claim against Mr. Lehoux was \$70,478.35.

[50] A cost claim that approaches the full amount of the claim, even on a substantial indemnity basis, is unreasonable and not within the reasonable expectation of the opposite party.

[51] I award Mr. Lehoux his substantial indemnity costs fixed in the amount of \$20,000.

Interest

[52] I had asked the parties for submissions on whether or not there was a basis for me to exercise my discretion to depart from the interest rates set out in the Courts of Justice Act because the plaintiff was deprived of his money for five years.

[53] The plaintiff continued to maintain that I should award him 28 % interest in the exercise of my discretion. There is no basis for this. I reject the argument that the plaintiff can unilaterally demand 28 % and that this somehow converts the funds that he was awarded into a loan with a 28 % interest rate. *Bank of America Canada v. Mutual Trust Co.*, 2002 SCC 43 does not stand for this proposition. It deals with compound interest.

[54] I am satisfied that there is no basis for me to depart from the Courts of Justice Act rates for interest given the submissions of the parties.

[55] If the plaintiff incurred specific interest on the funds, he should have put that evidence in his affidavit. As I have said, although I did not admit his evidence on his interest claim, it would only have supported an interest claim of between 4.45 and 7.7 per cent.

[56] The plaintiff is also responsible for some of the delay and his unreasonable positions may have prevented the parties from resolving this matter.

[57] The action was commenced in the second quarter of 2019. Therefore, the interest rate is 2 %. I agree with the Church that this amount should be applied only on the \$67,380.61 being the sum net of the interest that the Church was collecting for the plaintiff. I agree that applying interest to the amount the Church earned while holding that money in trust would be a form of double counting.

[58] The per diem amount would be \$3.69 per day.

[59] The Church argues that I should restrict the commencement of interest to when the Church sold the property. I agree with this because I did not find that the Church breached the agreement at the time of closing. Up until it sold the property it was claiming specific performance and so it was not inappropriate for it to keep the funds. I also agree that interest should only be payable to the date of the first adjournment requested by the plaintiff on April 29, 2024.

[60] Therefore, the prejudgment interest is \$5,302.92.

PAPAGEORGIU J.

Released: June 27, 2025

CITATION: Gyimah v. The Roman Catholic Episcopal Corporation of the Diocese Of Hearst in
Ontario, 2025 ONSC 3876
COURT FILE NO.: CV-19-00624256
DATE: 20250627

ONTARIO
SUPERIOR COURT OF JUSTICE

ANTHONY GYIMAH O/A
ENTRY POINT INVESTMENT GROUP
Plaintiff

– and –

THE ROMAN CATHOLIC EPISCOPAL
CORPORATION OF THE DIOCESE OF HEARST IN
ONTARIO, ROYAL LEPAGE TRIDENT REAL
ESTATE (KAP) BROKERAGE AND ANDRE
LEHOUX
Defendant

COSTS ENDORSEMENT

PAPAGEORGIU J.

Released: June 27, 2025