

CITATION: Singh v. Chaitons LLP et al, 2025 ONSC 3967
COURT FILE NO.: CV-22-00687000-00
DATE: 20250703

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: JASVINDER SINGH, Raghbir Singh, Kulwant Singh, J&K Shopping Centre Inc., J&K Properties Inc. and Taj Supermarket, Plaintiffs

AND:

CHAITONS LLP, Stephen Schwartz and Ernst and Young LLP, Defendants

BEFORE: Parghi J.

COUNSEL: *Patrick Di Monte*, for the Plaintiffs

Cynthia L. Spry and *Aaron Gold*, for the Defendant/Moving Party, Ernst & Young LLP

HEARD: July 3, 2025 (in writing)

ENDORSEMENT

[1] By Endorsement dated May 5, 2025, I granted summary judgment in favour of the Defendant Ernst & Young on the basis that the limitation period for the Plaintiffs' action against it had elapsed. The parties were unable to resolve costs between them. A timetable was set for the exchange of costs submissions, which I have reviewed. I now issue this Endorsement on costs.

[2] In exercising my discretion to fix costs under section 131 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, I may consider the factors enumerated in Rule 57.01 of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194. Those factors include the result achieved, the amounts claimed and recovered, the complexity and importance of the issues in the proceeding, the principle of indemnity, the reasonable expectations of the unsuccessful party, and any other matter relevant to costs.

[3] In *Apotex Inc. v. Eli Lilly Canada Inc.*, 2022 ONCA 587, at para. 60, the Court of Appeal for Ontario restated the general principles to be applied when courts exercise their discretion to award costs. The Court held that, when assessing costs, a court is to undertake a critical examination of the relevant factors, as applied to the costs claimed, and then “step back and consider the result produced and question whether, in all the circumstances, the result is fair and reasonable”.

[4] Applying these factors here, I note, first, that Ernst & Young was entirely successful on the motion, and, as a consequence, in the action itself. It is therefore entitled to its costs on the motion and the action based on the principle of indemnity.

[5] Additionally, the amounts that Ernst & Young seeks are in themselves reasonable. Their overall fees, in terms of hourly rates and time spent, are reasonable, particularly given that the costs sought are not just for the motion but for the proceeding in its entirety. The issues were of importance, especially considering the amount sought by the Plaintiffs in damages and the seriousness of their allegations of professional impropriety on the part of Ernst & Young. Ernst & Young's written materials and oral submissions were helpful to the court.

[6] I am unable to accept the Plaintiffs' submission that the costs sought in the motion are excessive. Their suggestion that the motion was simple and narrow is, with respect, not tenable. While it was not an unduly complicated motion, it did require Ernst & Young to address several limitation period issues and to conduct research on certain legal issues. Indeed, the Plaintiffs argued before me that the limitation period issues so complex that they could only be properly adjudicated at trial. It is surprising that they would now suggest that Ernst & Young needlessly complicated matters.

[7] I now consider the scale of costs to be awarded.

[8] Ernst & Young made an offer to settle on August 17, 2023. In its offer, Ernst & Young offered to agree to a without costs dismissal for 20 days after the offer was made, and to a dismissal with costs paid on a partial indemnity basis thereafter. The offer to go out with costs remained open until after the commencement of trial.

[9] The result of the summary judgment motion was that Ernst & Young is now released from the litigation and entitled to its costs. As such, the offer that Ernst & Young served on the Plaintiffs almost two years ago matched or beat what it obtained at the hearing.

[10] Had Ernst & Young been a plaintiff in this proceeding, rule 49.10(1)(c) would have operated to entitle it to partial indemnity costs up to the date of the offer and substantial indemnity costs from the date of the offer forward. Those costs consequences do not formally apply here because Ernst & Young is a defendant.

[11] Nonetheless, in my view, it is appropriate to exercise my discretion to grant Ernst & Young its costs on a partial indemnity basis prior to the date of the offer, and on a substantial indemnity basis from the date of the offer forward. Rule 49.13 provides that, when I exercise my discretion in awarding costs, I may "take into account any offer to settle made in writing, the date the offer was made and the terms of the offer". Rule 57.01 echoes this by providing that a written offer to settle is among the factors I may consider when exercising my discretion in assessing costs pursuant to section 131 of the *Courts of Justice Act*. Ernst & Young's offer was a *bona fide* offer from the successful party that, if accepted, would have saved the parties costs in the future. It is a factor that I may properly take into account when exercising my discretion to fix costs (*Oudin v. Le Centre Francophone de Toronto*, 2015 ONSC 7622, at paras. 4-6, 8).

[12] Ernst & Young's costs, on a partial indemnity scale to the date of the offer and substantial indemnity scale thereafter, are \$136,678.61. Ernst & Young seeks \$125,000.00, reflecting a slight discount on that amount. In my view, that amount is fair and reasonable in all the circumstances. I accordingly order the Plaintiffs to pay Ernst & Young \$125,000.00 in costs, inclusive of legal fees, disbursements, and HST, within 30 days.

Parghi, J.

Date: July 3, 2025