

**CITATION:** Dunning v. Colliers Macaulay Nicolls Inc., 2025 ONSC 3561  
**COURT FILE NO.:** CV-18-00600000-0000  
**MOTION HEARD:** 2025-5-14

**SUPERIOR COURT OF JUSTICE – ONTARIO**

**RE:** AMANDA DUNNING, plaintiff  
AND:  
COLLIERS MACAULAY NICOLLS INC. et al, defendants

**BEFORE:** ASSOCIATE JUSTICE R. FRANK

**COUNSEL:** Robert Macdonald for the defendants/moving parties  
Amanda Dunning, self-represented plaintiff

**HEARD:** May 14, 2024

2025 ONSC 3561 (CanLII)

**REASONS FOR DECISION**

[1] This is a motion by the defendants to dismiss or alternatively stay this action on the basis that the plaintiff has failed to comply with a December 15, 2023 order requiring her to pay to the defendants \$5,086.08 in costs.

[2] For the reasons that follow, the action is stayed in order to provide the plaintiff with a final chance to pay the costs ordered to be paid to the defendants, failing which the plaintiff’s action will be dismissed without further notice or motion.

**A. NATURE OF THE ACTION AND PROCEDURAL HISTORY**

[3] The plaintiff, Amanda Dunning, commenced this action by statement of claim issued on June 19, 2018. The claim was amended by way of a fresh as amended statement of claim issued on September 5, 2018. In the fresh as amended statement of claim, Ms. Dunning claims for breach of contract and theft of intellectual property. The pleading includes allegations that the defendant Daniel Holmes: (1) interviewed her for a job with the defendant Colliers Macaulay Nicholls Inc. (“Colliers”); (2) asked her to email him a copy of her business plan; (3) offered her a job with Colliers; (4) failed to follow through on the job offer; and (5) used her business plan for Colliers’ benefit.

[4] Ms. Dunning also alleges that the defendants Colliers and Holmes were acting in a conspiracy. The allegations include that, in offering her a job, Colliers and Holmes were acting at

the behest of her former employer, Intercity Realty Inc. (“Intercity”), and that the job interview was a sham designed to coax Ms. Dunning into giving Colliers a copy of her business plan.

[5] The defendants deny that Ms. Dunning was offered a position with Colliers. They also allege that Ms. Dunning’s business plan had no commercial value and was not given in circumstances that would give rise to confidentiality. The defendants deny having engaged in any conspiracy or wrongful conduct.

**Plaintiff’s production motion**

[6] In 2020, Ms. Dunning brought a motion to compel the defendants to deliver a further and better affidavit of documents. The motion was heard by Associate Justice McGraw on November 18, 2020. By endorsement dated November 18, 2020, Associate Justice McGraw made various orders and gave directions with respect to steps that the defendants were required to take regarding certain categories of documents. He also ordered a timetable for examinations for discovery, mediation and the scheduling of any motions arising from examinations for discovery. Costs of the motion were deferred to a future attendance before Associate Justice McGraw.

[7] At a case conference on June 1, 2021, Associate Justice McGraw made an order amending the timetable with respect to the action, and he set deadlines for the parties to deliver written cost submissions regarding the plaintiff’s November 2020 production motion. On October 12, 2021, Associate Justice McGraw released his costs endorsement that provided, in part, as follows:

[10] Given the divided success, the early stage of the proceedings and the submissions of the parties, I conclude that an assessment of the reasonableness and necessity of **the Plaintiff’s motion**, the conduct of the parties **with respect to the motion** and other relevant factors under Rule 57.01(1) is more appropriately reserved to the trial Judge (*Fincantieri Marine Systems North America Inc. v. Annan Energy Ltd.*, 2015 ONSC 2395 at paras. 7-10). In my view, it would not be appropriate to fix costs at this time as the trial Judge will be in a better position to assess all relevant factors on a complete record after all steps in these proceedings have been completed.

[11] In all of the circumstances, I am satisfied that the **costs of the motion** should be costs in the cause. [emphasis added]

**Plaintiff’s motion to amend the fresh as amended statement of claim**

[8] On September 9, 2021, Ms. Dunning served a notice of motion with respect to a motion for leave to amend the fresh as amended statement of claim. That motion was ultimately heard by Associate Justice Brown on March 1, 2022. Associate Justice Brown dismissed Ms. Dunning’s motion, finding that the proposed pleading did not comply with the general rules of pleading under Rule 25.06 and that it was frivolous, vexatious, and an abuse of process.

[9] Ms. Dunning scheduled an appearance in Civil Practice Court on December 13, 2022 with respect to an intended appeal of Associate Justice Brown’s order dismissing her motion for leave to amend the fresh as amended statement of claim. By endorsement dated December 15, 2022, Justice Centa declined to schedule Ms. Dunning’s appeal and directed the registrar to issue a notice

under Rule 2.1 of the *Rules of Civil Procedure* giving Ms. Dunning notice that the court was considering dismissing her appeal pursuant to Rule 2.1.01 on the basis that it was frivolous, vexatious, or an abuse of process. Justice Centa's endorsement also indicated that, at the defendants' request, he would consider making an order under rule 37.16 prohibiting Ms. Dunning from making any further motions in the proceeding without leave.

[10] By endorsement dated January 3, 2023, Justice Centa dismissed Ms. Dunning's appeal of Associate Justice Brown's order dismissing her motion for leave to amend the fresh as amended statement of claim. Justice Centa found that the appeal was frivolous and vexatious. Justice Centa also made an order under Rule 37.16 barring Ms. Dunning from bringing any further motions in this action without leave. The endorsement provides, in part, as follows:

[3] I have reviewed Ms. Dunning's submissions and the amended statement of claim she would file if the decision of the associate judge is ultimately set aside. Ms. Dunning's submissions were rambling, incoherent, unfocussed, vituperative, and unresponsive to the question I asked her to address. Her submissions, like her proposed appeal, were frivolous and vexatious. This is a clear case where the abusive nature of this motion is apparent on the face of the material she has filed. This is not a close call.

[4] For the reasons that follow, I dismiss Ms. Dunning's appeal of the order of the associate judge pursuant to rule 2.1.02. I also order pursuant to rules and 2.1.02(3) and 37.16 that Ms. Dunning may not make any further motions in this proceeding without leave of the court.

[11] Following the release of Justice Centa's January 3, 2023 endorsement, Ms. Dunning sent an email on January 4, 2023 to the court, counsel, and others that included the following: "STUPID STUPID STUPID MAN Justice Centa", and "Master Brott hopelessly corrupt...".

[12] In another email on January 6, 2023, Ms. Dunning wrote, in part:

Where is the worthless, pointless, hopeless, spineless, "GOT MY HAND OUT", corrupt JUSTICE CENTA, JUDGE MYERS, JUDGE MORAWETZ, JUDGE NAKATSURU NOW I AM AFRAID AS WELL, MASTER of nothing Brott and Mgraw, how do you justify this now?

### **Failed mediation process**

[13] In August 2021, shortly before bringing her motion to amend the fresh as amended statement of claim, Ms. Dunning asked that the court appoint a mediator for this action. The court appointed Ms. Carol Takahashi as the court-appointed mediator, and Ms. Takahashi contacted the parties with respect to scheduling a mediation of the action.

[14] As a result of certain conduct by the plaintiff in her interactions with the mediator, the mediator withdrew, stating that "this matter is not suitable for mediation". The mediator referred the action back to the Mandatory Mediation office of the court and noted that "A Consent Order to dispense with the Mediation is likely the best course of action." In response, Ms. Dunning

alleged that Ms. Takahashi actions were in breach of Ms. Dunning's *Charter* rights, and Ms. Dunning called Ms. Takahashi "one sided and corrupt".

[15] Following the mediator's withdrawal, the defendants sought Ms. Dunning's consent to an order dispensing with mandatory mediation. When Ms. Dunning refused to consent to such an order, the defendants brought a motion for an order exempting the action from mandatory mediation. The defendants' motion was heard by Associate Justice Brown on August 15, 2023. The motion was granted, with reasons to follow, which were provided by endorsement dated December 15, 2023.

[16] At the August 15, 2023 hearing of the defendants' motion to exempt the action from mandatory mediation, the parties made cost submissions with respect to costs of that motion. The defendants' submitted that Ms. Dunning should be ordered to pay them costs of the motion, and that costs should be fixed on a substantial indemnity basis. In response, Ms. Dunning submitted that the defendants should be ordered to pay her costs of the motion.

[17] By order dated December 15, 2023, Associate Justice Brown ordered Ms. Dunning to pay the defendants their costs of the motion on a substantial indemnity in the amount of \$5,086.08 within 30 days (the "2023 Costs Order"). Associate Justice Brown's December 15, 2023 endorsement provided as follows with respect to costs of the motion:

[8] As the defendants were entirely successful on the motion, they should have their costs. The defendants seek costs on the substantial indemnity scale. I find that the plaintiff engaged in reprehensible conduct in her interactions with the court-appointed mediator. I also find that in opposing the exemption from mandatory mediation absent any *bona fide* intention to mediate this dispute the plaintiff has engaged in an abuse of the court's process. The plaintiff's conduct in my view is sufficiently egregious to be deserving of the sanction of enhanced costs. The defendants shall have their costs of the motion on the substantial indemnity scale, fixed at \$5,086.08 based on the Costs Outline filed, which I find to be reasonable.

[18] The defendants' counsel wrote to Ms. Dunning three times seeking payment of the 2023 Costs Order. Ms. Dunning did not respond or pay the costs ordered to be paid. In May 2024, defendants' counsel wrote to Ms. Dunning and advised that the defendants intended to move for an order dismissing this action given her failure to comply with the 2023 Costs Order.

**Plaintiff's inappropriate conduct in other proceedings**

[19] During the course of this action, Ms. Dunning has also been a plaintiff in a separate action against her former employer, Intercity, and others. In 2020, Ms. Dunning brought a motion to amend the statement of claim in her action against Intercity. Justice Myers declined to book the proposed motion and directed the Registrar to issue a notice to Ms. Dunning under Rule 2.1.02 requiring Ms. Dunning to provide written submissions explaining why her motion was not frivolous. Ms. Dunning then filed written submissions. On July 14, 2020, Justice Myers found that the motion could not succeed as it was frivolous. Justice Myers stayed Ms. Dunning's motion without prejudice to her entitlement "to move before a Master to add a party or to amend her

statement of claim on properly narrowed evidence (and not advancing the draft fresh as amended statement of claim referred to in her notice of motion).”

[20] Ms. Dunning then brought a motion for leave to amend her pleading in the claim against Intercity, and for other relief, which was heard by Associate Justice Brott. By endorsement dated November 8, 2021, Associate Justice Brott denied the plaintiff’s motion for leave to amend the statement of claim. Associate Justice Brott found that the proposed amendments were “scandalous, frivolous and vexatious”. Associate Justice Brott also found that Ms. Dunning’s proposed amended pleading contained “the same or substantially the same paragraphs as the proposed pleading that was before Justice Myers.”

[21] Ms. Dunning appealed Associate Justice Brott’s decision dismissing her motion. That appeal was heard by Justice Vella. In February 2023, Justice Vella dismissed Ms. Dunning’s appeal and awarded the Intercity parties their costs on a substantial basis, noting Ms. Dunning’s “egregious conduct” including her unsubstantiated attacks against judicial officers and officers of the court.

[22] In another action commenced by Ms. Dunning, Justice Myers dismissed Ms. Dunning’s entire claim against Mount Sinai Hospital and others under Rule 2.1 on the basis that the action was frivolous and that it would be abusive to require the defendants to move against the claim.<sup>1</sup>

## **B. ISSUES**

[23] The issue on this motion is whether the plaintiff’s action should be dismissed or alternatively stayed in view of her failure to pay the 2023 Costs Order.

## **C. LAW AND ANALYSIS**

### ***1. Applicable principles***

[24] When cost orders are not paid, the court has jurisdiction under both Rule 57.03(2) and Rule 60.12 of the *Rules of Civil Procedure* to dismiss or stay a party’s proceeding, or to make such other order as the court deems just.

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<sup>1</sup> *Dunning v. Mount Sinai Hospital et al*, Court File No. CV-20-645143 (unreported)

[25] The enforcement of interlocutory orders is of overriding concern for the court to ensure the administration of justice, and to uphold the integrity of the justice system.<sup>2</sup> Failure to ensure such compliance in the course of litigation is “corrosive of the entire justice system”.<sup>3</sup>

[26] The principles the court applies in determining whether to exercise its discretion to stay or dismiss an action for breach of a costs order or an interlocutory order have been summarized as follows:<sup>4</sup>

- (a) Where there has been non-compliance with an order of the court, the court should be alive to the possibility that its process is being abused; failing to act may deprive the moving party of justice according to law and risks rendering the court a paper tiger: *Bottan v. Vroom*, at para. 24-25;
- (b) The right of access to the courts must be accompanied by the responsibility to abide by the rules of civil procedure and to comply with orders of the court - to exempt impecunious parties from the enforcement of costs orders when made would amount to granting “carte blanche to continue to ignore the rules and orders of the court and take unsupportable steps in the action without fear of consequences” per Master Dash in *Heu v. Forder Estate*, 2011 CanLII 16198 (ON SC) at para. 19-20;
- (c) The court ought not to sit in appeal of the prior costs awards – the respondent will have had the opportunity to make submissions about impecuniosity at the prior hearings that resulted in the costs orders and seeking to relieve against prior costs orders constitutes a collateral attack on orders previously made: *Bottan v Vroom*, at para. 23; *Visic v. University of Windsor*, 2013 ONSC 2063 (CanLII) at para. 36 and 66; *Trewin v. MacDonald*, [2008] O.J. No. 2821 (ONSC) at para. 26;
- (d) The court may have regard to a pattern of unnecessary and unreasonable steps taken in the proceeding, including appealing numerous orders without chance of success or knowing the risk thereby imposing costs upon the other party: *Visic v. University of Windsor* at para. 68;
- (e) If the orders of the court are “cavalierly ignored” and if a litigant “continuously fails to comply with her obligations as a litigant and then fails to abide by the costs consequences attendant upon that behavior, the court is justified in bringing some finality to the action” (per Master Dash in *Burrell v Peel (Regional Municipality) Police Services Board*, 2007 CanLII 46173 (ONSC) at para 63; aff’d 2010 ONSC 1387 (CanLII));

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<sup>2</sup> *Apollo Real Estate v. Streambank Funding Inc.*, 2018 ONSC 392 (“*Apollo Real Estate*”) at para 42

<sup>3</sup> *Rana v. Unifund Assurance Company*, 2016 ONSC 2502 (“*Rana*”) at para 2

<sup>4</sup> *Rana* at para 50

- (f) Impecuniosity is not a shield for unreasonable conduct of litigation and a dismissal order may be made even if it resolves the matter on procedural rather than substantive grounds: *Baradaran v. Tarion Corp.*, 2014 ONSC 6870 (CanLII);
- (g) Self-represented litigants, while entitled to some accommodation and assistance to ensure a fair hearing, are not entitled to abuse the system or the party opposite and failure to enforce orders once made against self-represented parties is unfair to the parties opposite and undermines respect for the court and the civil justice system: per Myers J. in *Baradaran v. Tarion Corp.*, 2015 ONSC 7892 (CanLII); *Bilich v. Toronto (City) Police Services Board*, 2014 ONSC 6765 (CanLII);
- (h) “Courts usually talk in terms of prejudice that cannot be compensated for by costs. But, at some point, costs themselves become an inadequate form of compensation for prejudice, especially where the party on whom they are imposed refuses to pay them”: per D.M. Brown J.A. in *Schwilgin v. Szivy*, 2015 ONCA 816 at para. 23.45

[27] Additional principles applicable to the court’s exercise of its discretion include the following:<sup>5</sup>

- (a) When determining if an action should be dismissed where there is non-compliance with a costs order, the court must balance the competing interests of all parties and consider all relevant factors: *Garrett v. Oldfield, Greaves, D’Agostino*, 2016 ONCA 424 (Ont. C.A.).
- (b) The importance of self-represented litigants to understand the nature of proceedings and to have a fair opportunity to present their case was recognized in *Baradaran v. Tarion Corporation*, 2015 ONSC 7892. However, “ignoring court orders is unjust and unfair to opponents and generally cannot be condoned by the courts.”
- (c) Where impecuniosity is used as a shield against cost sanctions, it would mean “that a plaintiff could bring, resist, or appeal motions with no fear of consequences, and would emasculate the powers provided in Rules 57.03(2) and Rule 60.12: *Baksh v. Sun Media (Toronto) Corp.* (2003), 2003 CanLII 64288 (SCJ); and
- (d) It has been held by the Court of Appeal that “while standing alone, lack of funds cannot justify a failure to pay costs. That said, evidence of impecuniosity is a factor to take into consideration. As is always the case when there are competing interests, the goal is to strike a balance”: *Tarion Warranty Corp. v. 1486448 Ontario Inc.*, 2012 ONCA 288.

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<sup>5</sup> *Apollo Real Estate* at paras 44-48

## 2. *Analysis*

### *(a) Plaintiff's refusal to pay the 2023 Costs Order*

[28] Despite numerous demands by the defendants and notice from the defendants that they would be bringing this motion, the plaintiff has not paid the costs ordered to be paid pursuant to the 2023 Costs Order.

[29] There is no evidence that the plaintiff is impecunious and unable to pay the costs order. To the contrary, there is evidence that she travelled to the London, England in order to try to obtain evidence to support her motion to amend the fresh as amended statement of claim.

[30] In addition, Ms. Dunning has not demonstrated any intention of paying the 2023 Costs Award, nor has she made any effort to do so. Rather, at the hearing of this motion, Ms. Dunning stated unequivocally that she will not pay the 2023 Costs Order because she takes the position she is not required to do so. Specifically, she takes the position that Associate Justice McGraw made an order that the costs of all interlocutory steps in this action are reserved to the trial judge. However, there is no endorsement or order in the record that supports the plaintiff's position. Rather, Associate Justice McGraw's October 12, 2021 costs endorsement provides only that the costs of the plaintiff's production motion that was before him should be reserved to the trial judge, and he ordered that the costs of that motion would be costs in the cause. Associate Justice McGraw's costs endorsement does not provide that it applies to any other or any future costs order, such as the 2023 Costs Order.

[31] Further, as noted, the parties made costs submissions at the August 15, 2023 hearing of the defendants' motion for an order exempting the action from mandatory mediation. At that time, the plaintiff did not assert that Associate Justice McGraw had ordered that the costs of the interlocutory steps in this action are reserved to the trial judge. To the contrary, the plaintiff submitted that Associate Justice Brown should order the defendants to pay to her costs of the defendants' motion to dispense with the mediation. The plaintiff's submissions to Associate Justice Brown that costs should be paid to her is inconsistent with her current position that Associate Justice McGraw had ordered that the costs of all interlocutory steps in this action are reserved to the trial judge.

[32] In the result, there is no basis to support the plaintiff's current position that she is not required to pay the 2023 Costs Order. Associate Justice Brown's 2023 Costs Order is unambiguous. It expressly required the plaintiff to pay the defendant costs in the amount of \$5,086.08 within 30 days. Ms. Dunning failed to do so and is in breach of the 2023 Costs Order.

*(b) Additional relevant factors*

[33] The defendants submit that although this motion is brought on the basis that Ms. Dunning is in default of the 2023 Costs Order, the court must also consider the numerous findings that Ms. Dunning has acted abusively and brought frivolous and vexation proceedings in this and other actions. I agree that those are relevant considerations. In *Rana*, Dunphy J. held that in considering the motion before him it was appropriate to consider “all of the plaintiff’s conduct in the litigation to date”.<sup>6</sup>

[34] On this motion, the following additional factors are relevant:

- (a) Ms. Dunning filed a significant amount of material that was irrelevant to the issues on the motion. Despite my efforts to remind Ms. Dunning to focus her oral submissions on the issues relevant to the motion, the bulk of Ms. Dunning’s submissions related to issues that went to the merits of her claim. Further, despite ample warnings, Ms. Dunning frequently made submissions on issues that are not pertinent to the action as currently pled. She persisted in making irrelevant arguments, including conspiracy allegations, that were a repetition of the arguments raised in connection with her unsuccessful motion to obtain leave to amend the claim which had been dismissed by Associate Justice Brown.
- (b) Ms. Dunning’s conduct on the hearing of this motion was frequently abusive. In her responding submissions on this motion, Ms. Dunning was attacking and highly disrespectful of counsel, court staff, numerous judicial officers, and the court generally. When asked to start summarizing her submissions, Ms. Dunning stated that she had nothing more to say and that she would be leaving the Zoom meeting through which the virtual hearing was taking place. She called me “absolutely asinine” and then disconnected herself from the Zoom meeting.<sup>7</sup>

[35] As Justice Dunphy noted about the plaintiff in *Rana*, Ms. Dunning’s conduct on this motion can be characterized as “disruption, drama and no forward progress in the moving of this action towards a resolution” and the plaintiff “shows no signs of being able to follow directions or govern her behavior as a responsible litigant.”<sup>8</sup> This is a repetition of Ms. Dunning’s improper conduct before the court on prior motions and attendances. As noted, Justice Centa and Associate Justice Brown have previously found Ms. Dunning’s conduct in this action to be vexatious. In addition, as noted, the plaintiff has consistently displayed an inability to conduct herself as a responsible litigant in connection with the proceedings in numerous other actions. Justice Myers, Justice Vella and Associate Justice Brott have previously found the plaintiff’s conduct to be vexatious.

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<sup>6</sup> *Rana* at para 45

<sup>7</sup> Given that the plaintiff had voluntarily and intentionally left the Zoom meeting before the conclusion of the hearing of the motion, I permitted defendants’ counsel to make his reply submissions even though the plaintiff was no longer in attendance.

<sup>8</sup> *Rana* at para 55

[36] In all the circumstances, I find that “[i]t would be unfair to this defendant to be required to answer the plaintiff’s claims in court when the plaintiff herself simply refuses to abide by the orders of that same court” and “[f]airness requires firm action to restore respect for the integrity of the process of the court.”<sup>9</sup> In considering the applicable principles and the facts of the present case, I conclude that, as in *Rana*, “[t]here comes a point where the interests of justice require firm action. This is such a case.” and “...the conduct of this plaintiff has reached the point where the interests of justice require the dismissal of the plaintiff’s claim subject to providing her with one last chance to obey the orders made and pursue her claim.”<sup>10</sup>

#### D. DISPOSITION AND COSTS

[37] In considering the appropriate relief, I find that, as in *Rana*, an immediate dismissal order ought to be a last and not first resort. In the circumstances, I am of the view that the plaintiff should have a final chance to cure her default and pay the 2023 Costs Order as well as costs of this motion, if any are ordered. Accordingly, I order as follows:

- (1) The plaintiff’s action is stayed pursuant to Rule 60.12 and Rule 57.03(2) of the *Rules of Civil Procedure*.
- (2) The defendants shall serve written submissions on costs of this motion of no more than three pages (not including their costs outline) by no later than June 26, 2025. The plaintiff shall deliver responding costs submissions with the same restrictions by no later than July 10, 2025. Costs submissions shall be submitted to my Assistant Trial Coordinator, Gobiga Amalakumar, by email to [Gobiga.Amalakumar@ontario.ca](mailto:Gobiga.Amalakumar@ontario.ca), following which I will release a costs endorsement with respect to costs of this motion.
- (3) The stay of proceedings shall only be removed upon the plaintiff paying to the defendants in full:
  - (i) the costs ordered under the 2023 Costs Order, in the amount of \$5,086.08 plus postjudgment interest up to today at a rate of 6% per year that I calculate in the amount of \$455.65, for a total amount payable of \$5,541.73; and
  - (ii) the costs, if any, ordered to be paid pursuant to my pending costs endorsement with respect to this motion.
- (4) If the foregoing amounts are not paid in full within thirty days of the date of release of my costs endorsement with respect to this motion, the plaintiff’s claim shall be dismissed without further notice or motion and the defendant shall be entitled to apply for an order dismissing the action upon filing an affidavit certifying non-payment of the foregoing amounts ordered to be paid.

[38] Nothing in my order today is intended to vary in any way the January 3, 2023 order of Justice Centa pursuant to rules and 2.1.02(3) and 37.16 that Ms. Dunning may not make any further

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<sup>9</sup> *Rana* at paras 57 and 58

<sup>10</sup> *Rana* at paras 1 and 51

motions in this proceeding without leave of the court. For greater clarity, should the plaintiff make the payments provided in my order above, the January 3, 2023 order of Justice Centa shall nevertheless remain in full force and effect.

**DATE:** June 16, 2025

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**R. Frank Associate J.**