

Court of King's Bench of Alberta

Citation: Royal Bank of Canada v Simmer, 2026 ABKB 250

Date: 20260331
Docket: 2101 00450
Registry: Calgary

Between:

Royal Bank of Canada

Plaintiff

- and -

Simmer Project Solutions Inc.,
Todd Simmer, and Rayanne Simmer

Defendants

Decision on Costs and Interest of the Honourable Justice N.E. Devlin

Overview

[1] In reasons reported at *Royal Bank of Canada v Simmer*, 2025 ABKB 432, I granted the Royal Bank (“RBC”) summary judgment against the Simmers on a series of long-defaulted credit facilities, and also upheld a prior grant of summary judgment on a counterclaim brought by them, effectively as a device to forestall payment of their financial obligations. The parties were unable to agree on costs and re-appeared to make extensive submissions on costs and interest.

Facts informing costs and interest

[2] RBC relies on the commonplace contractual entitlement to solicitor-client costs contained in each of the applicable credit agreements to seek full indemnification. These actions concerned borrowing agreements and therefore contained their own provisions for interest in the event of default. RBC seeks interest accrued over the course of the litigation on that basis.

[3] The total indebtedness under the credit lines ranged between \$100,000 and \$200,000, making this a Column 2 matter, if dealt with through Schedule “C” costs.

[4] RBC’s actual legal expenses totalled \$116,143. RBC claims this, together with \$64,432.79 in interest accruing prior to judgment and \$7,629.65 accruing post-judgment. The contractual rate of default interest in the security and guarantee agreements is prime plus 5%.

[5] The default demands on which summary judgments were granted dated from 2020, with the accounts having been in distress for quite some time before that. The Statement of Claim for these debts was issued on January 5, 2021.

[6] The matter had a long procedural history, detailed in RBC’s materials, leading up to the initial summary judgment application, which the Simmers were able to partially resist before an Applications Judge of this Court. Their counterclaim was struck but RBC’s action was directed to trial. The matter was ultimately concluded before me on appeal.

Guiding legal principles

[7] RBC is presumptively entitled to costs as the successful party, and has a strong claim for solicitor-client costs based on the contractual promises the Simmers made when signing the loan agreements: *Alberta Rules of Court, r 10.29*; *Alberta Treasury Branches v 1401057 Alberta Ltd (Katch 22)*, 2015 ABQB 548 at paras 8-11, 21-26; *9344-7167 Quebec Inc v True North Mortgage Inc*, 2024 ABKB 443 at paras 15, 19.

[8] Costs are always in the Court’s discretion, subject to overarching guidance from the *Rules of Court* and appellate authority. The existence of a valid contractual obligation to pay full indemnity costs does not oust the Court’s discretion to set costs as it sees fit, so long as it does so in a principled manner: *Alberta Treasury Branches v. 1401057 Alberta Ltd. (Katch 22)*, 2013 ABQB 748 at para 28.

[9] There is also established appellate authority that courts may depart from contractual costs indemnities where these become disproportionate to the underlying sums in dispute: *Driving Force Inc v I Spy-Eagle Eyes Safety Inc*, 2022 ABCA 25 at para 72; *Manufacturers Life Insurance Company v. Toronto-Dominion Bank*, 1988 ABCA 351 at para 17.

[10] I note that this Court has held that harshness in the form of financial hardship on the part of the payor does not provide a basis to deviate from a contractual award of costs: *Marasse Estate (Re)*, 2018 ABQB 119 at para 3. While I do not necessarily adopt that as a universal rule, the underlying principle is sound: contracts should not be more or less enforceable depending on a party’s means at the time judgment is granted for breach. Nevertheless, ability to pay cannot be entirely divorced from proportionality overall. I am satisfied that the Court may consider the payor’s overall position in this regard, though not to nearly the same degree as in the absence of a contractual obligation to pay costs.

[11] The *Rules* also establish that costs awards should be informed by the amount claimed and received, any conduct that unduly lengthened the action, whether any applications were unnecessary, and whether the parties contravened any Court order or rules: *r 10.33(1)(b)*; *10.33(2)(a)*; *10.33(2)(d)*; *10.33(2)(f)*.

Analysis

[12] The starting point is enforcing performance of the parties' contractual commitments. This would mean full indemnification. The matter is, however, not so simple. At first blush, a six-figure legal bill to collect a simple contractual debt seems manifestly excessive. In the same vein, the legal costs claimed equal 89% of the principal amount as of the appeal date. This, together with the raw quantum, invites an assessment of the proportionality of the expenditures against the recovery.

[13] However, this case was rendered anything but simple by the Simmers' decision to mount a meritless full-court press against their obligation to pay. The Simmers muddied the waters as much as possible, which elevated this from a straightforward debt collection to something markedly more complex. They equally cannot have expected that the Bank would roll over on receipt of their counterclaim. The counterclaim increased the overall complexity and costs substantially. There is little equitable basis to excuse the Simmers from paying the freight for putting a meritless (and time-barred) counterclaim on the table for obvious tactical reasons.

[14] For its part, some of RBC's recordkeeping and corporate memory in relation to this file were sub-optimal, meaning RBC cost itself more money than the file would objectively have warranted.

[15] In sum, this matter has been intensely litigated by both sides. It cost too much for what it was, and both sides carry some responsibility for this, though the Simmers bear the brunt of the blame. Ultimately, RBC won because this was an obvious debt that was in default. No amount of imaginative obfuscation was going to change the fact that the Simmers borrowed money and had not repaid it when it was due. This reality favours enforcement of the indemnity obligation.

[16] The Simmers assert that they have been willing to resume the credit relationship and thus resolve the matter. They suggest that this should attenuate their obligation to indemnify RBC, as they offered a vastly less costly solution to the dispute.

[17] This position belies the fact that they have never repaid a dime of the principal amount owing from the time their disputes with the Bank arose. RBC did not want the Simmers to resume servicing their vastly overdue debt; RBC wanted it paid off. RBC was wholly entitled to that outcome, based on the terms the Simmers accepted when borrowing the money. The proposal to resume the credit relationship was effectively an offer that RBC capitulate, and is meaningless to the assessment of costs.

[18] Given the quantum and apparent disproportionality of the costs claim, I have reviewed the legal accounts rendered to RBC in detail. They are, on the whole, within the realm of the reasonable. There were some excessive pre-claim costs, and I found that the time expended was perhaps 15% too high. Much of this flowed from an inordinate need to consult with the client, which in turn flowed, I find, from the aforementioned deficits in the state of RBC's file.

[19] The legal bills otherwise simply reflect the very high cost of contemporary litigation, even when conducted mostly by appropriately staffed junior counsel.

[20] Overall, and as a matter of discretion informed by my experience of the file and close review of the billings, I am of the view that the modest excesses in pre-litigation steps and client consultation, together with some reduction for proportionality to the amounts at issue, warrant a reduction in the costs awarded to \$85,000.

[21] I fully appreciate that this is a very significant amount for the Simmers. However, when you unquestionably owe money under a loan agreement, you litigate at your own risk. A forthright and cooperative attempt at debt mitigation would have been a vastly less expensive choice. Raising arms against a bank with a general security agreement and indemnity rights is a risky and expensive option, as this outcome demonstrates.

Interest

[22] RBC asks for the quantum of the judgment to include interest accrued on the unpaid debt. This amount is substantial given the passage of time. This is not prejudgment interest in the legal sense, as that is not awarded “where there is an agreement between the parties respecting interest”: *Judgment Interest Act*, RSA 2000, c J-1, s 2(2)(h).

[23] The Simmers take the position that the amount of interest should be abated because the litigation took unexpectedly long. Respectfully, that misses the fundamental point that interest would continue to accumulate on this debt irrespective of the litigation. Overdue debt is expensive debt. RBC is entitled to the contractual rate of interest, and consequently the amounts sought: *Bank of America Canada v. Mutual Trust Co.*, 2002 SCC 43 (CanLII), [2002] 2 SCR 601 at paras 49-50.

[24] The interest amounts sought by RBC appear to be accurately calculated, and will form part of the judgment.

Costs of this application

[25] There will be no further costs for this additional adjudication.

[26] I would conclude by thanking Mr. Jadusingh for his helpful role as limited retainer counsel to the Simmers. He made the best of a challenging position and was of assistance to the Court in reaching a fair outcome in this matter.

Heard January 15, 2026.

Dated at the City of Calgary, Alberta this 31st day of March, 2026.

N.E. Devlin
J.C.K.B.A.

Appearances:

Jonathan J. Bouchier & Catrina J. Webster
for RBC

Ravi Jadusingh
for the Simmers