CITATION: TCHOR ET AL v. TERRA CONTRACTING INC. ET AL, 2025 ONSC 4537

COURT FILE NO.: CV-23-00003947-0000

DATE: August 5, 2025

SUPERIOR COURT OF JUSTICE – ONTARIO

7755 Hurontario Street, Brampton ON L6W 4T6

RE: TCHOR, DAVID
TCHOR, SUNHA, plaintiffs

AND:

TERRA CONTRACTING INC.
ABU-HALIMEH, YUSEF, defendants

BEFORE: Justice C. Petersen

COUNSEL: David Tchor (self-represented), for the plaintiffs
Email: vt@heraldslaw.com

Tisha Alam and Gregory Longley, for the defendants
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HEARD: In writing

COSTS ENDORSEMENT

[1] This Endorsement pertains to a summary judgment motion brought by the plaintiffs and dismissed by me (with reasons delivered orally) on June 17, 2025. The motion was brought in the context of an action commenced under the Simplified Procedure rule (Rule 76) of the *Rules of Civil Procedure* ("RCP").

[2] The defendants seek an order for their costs of the motion on a substantial indemnity basis in the total amount of $82,805, or alternatively, costs on a partial indemnity basis in the amount of $53,826. The plaintiffs seek an order of costs against the defendants (notwithstanding the defendants' success on the motion), or an order for no costs to be paid, or in the further alternative, deferral of the costs issue to the trial judge. The plaintiffs also argue that the costs claimed by the defendants are excessive and unreasonable.

[3] I have discretion to award costs pursuant to s.131 of the *Courts of Justice Act*. The exercise of my discretion must be governed by the principles and factors set out in the RCP, including Rules 20.06, 49, 57, and 76.12.1.

[4] Any award of costs must ultimately be fair, proportionate and reasonable in all the circumstances of the case: *Boucher v. Public Accountants Council for Ontario*, 2004 CanLII 14579 (ON CA), at paras. 25-38.

[5] I reject the plaintiffs' argument that the defendants should be deprived of their costs of the motion because defendants' counsel "indicated they are litigating 'on credit' due to the 'devastating' costs for their client." The source of that quotation is not cited. That phrase is not contained in the defendants' written costs submissions; it may have been a statement made in correspondence between counsel, or an oral submission that I failed to note.

[6] In any event, the phrase "litigating on credit" simply means that the lawyers have been performing legal services with an expectation to be paid later, rather than insisting on upfront retainer payments, or payments as work is performed. It does not suggest that the defendants' counsel are acting *pro bono*. Nor does it suggest that they have agreed to bill their clients at reduced rates, or cap their fees, such that an award of costs might exceed the amount actually paid by the defendants and constitute a windfall for them. This case is therefore distinguishable from *1465778 Ontario Inc. v. 1122077 Ontario Ltd.*, 2006 CanLII 35819 (ON CA), on which the plaintiffs rely.

[7] I also reject the plaintiffs' argument that the defendants should be deprived of their costs (or be ordered to pay costs) because of their lawyers' alleged unprofessional conduct and unethical practices. The plaintiffs claim that the defendants falsely asserted (in their written costs submissions) that the plaintiffs filed reply materials late. The plaintiffs further claim that the defendants' counsel engaged in this deception in order to mislead the court about which party was responsible for the adjournment of the original motion hearing date on September 9, 2024. The plaintiffs argue that it was the defendants who were ordered by Justice Emery (in Triage Court) to file reply materials, and whose failure to do so resulted in an adjournment of the September 9, 2024 hearing date.

[8] Justice Emery's Endorsement dated July 9, 2024 states:

> Reply record to be filed by July 15, 2024
>
> Cross- examinations – None
>
> Factums – 14 days prior for the moving party, and 7 days for the responding party prior to hearing date.
>
> Long motion scheduled for September 9, 2024 @ 10 am in person for 1 day.

[9] The Timetable attached to Justice Emery's Endorsement states:

> ▪ MOVING PARTY'S MOTION RECORD, APPLICATION RECORD, TO BE DELIVERED BY:
>
> April 17, 2024
>
> ▪ RESPONDING PARTY RECORD TO BE DELIVERED BY: June 21, 2024
>
> ▪ REPLY RECORD, IF ANY, TO BE DELIVERED BY: July 5, 2024

[10] There is clearly a typographical error on the filing deadline for a reply record. It is either July 5 or July 15, 2024. Email correspondence between the parties suggests that the correct date for any reply record to be filed was likely July 5, 2024.

[11] On the date of the Triage Court appearance before Justice Emery, the plaintiff's motion record and the defendants' responding affidavit had already been filed (with

proof of service), on April 17, 2024 and June 21, 2024 respectively. Only reply materials (if any) and factums still needed to be filed.

[12] It is clear from the timetable attached to the Endorsement that "reply record" refers to affidavit materials to be filed by the moving party (i.e., the plaintiffs) in reply to the defendants' responding affidavit. The plaintiffs' suggestion that Justice Emery ordered the defendants to file a reply record is an absurd interpretation that the words in the Endorsement cannot reasonably support. Only the moving party has a right of reply.

[13] The motion was struck from the September 9, 2024 hearing list. Both parties sought clarification from Assistant Trial Coordinators at the Brampton courthouse about the reason for the vacated hearing date. Correspondence with court staff shows that the hearing date was vacated because "responding materials" were not filed. This appears to have been an administrative error, since the defendants' responding materials had been served, filed and uploaded to Case Centre by June 21, 2024. This is an unfortunate error for which neither party is responsible.

[14] In their written costs submissions, the defendants did not argue that the plaintiffs were responsible for the lost September 9, 2024 hearing date. Rather, the defendants argued that the plaintiffs acted unreasonably during the motion hearing before me, by falsely blaming the defendants for the September 9, 2024 adjournment and falsely accusing the defendants of being in violation of Justice Emery's timetable. The defendants correctly noted, in their written costs submissions, that the plaintiffs reply materials were filed at least 45 days late on August 30, 2024.

[15] There is no evidence to support the plaintiffs' serious allegation that defendants' counsel acted unethically and deliberately misled the court in an effort to cover up their own purported negligence in failing to file a reply record on time. There is no evidence whatsoever of any misconduct by defendants' counsel that would attract a costs sanction.

[16] I also reject the Plaintiffs' argument that the issue of costs should be deferred to the trial judge because the summary judgment record will be used in the Rule 76 trial. The Plaintiffs' affidavits are replete with inadmissible opinion and hearsay evidence that almost certainly will not be admitted at trial. Moreover, much of the focus of the motion materials was on the issue of whether summary judgment was appropriate in the circumstances. The motion materials will therefore have limited, if any, utility at trial.

[17] As the successful parties, the defendants are entitled to their costs of the motion. Although the plaintiffs made an Offer to Settle, the consequences for failure to accept an offer under Rule 49 do not apply in the circumstances of this case.

[18] Costs should be awarded against the plaintiffs on an elevated scale because their conduct during this litigation was unreasonable and deserves rebuke. I make this finding for the following reasons.

[19] The defendants' counsel put the plaintiffs on notice, in an email dated May 1, 2024, of their position that this matter "is certainly not appropriate for summary judgment." Defendants' counsel further cautioned the plaintiffs of their view that costs pursuant to Rule 20.06 would be appropriate if the plaintiffs chose to bring a motion for summary judgment and it was not successful.

[20] Given the number of factual issues on which conflicting evidence was adduced, it ought to have been apparent to the plaintiffs that summary judgment was not a suitable process to decide the action, especially after affidavits were exchanged. The outcome of the motion was a foregone conclusion; there was no prospect of its success: *Hanson v. Caputo*, 2012 ONSC 7022, at para. 74.

[21] Mr. Tchor's July 15, 2024 reply affidavit contains 27 paragraphs that begin with the phrase "Contrary to his [Mr. Abu-Halimeh's] sworn allegation…". In the circumstances, there were obviously numerous factual disputes requiring credibility findings. Given that the action was commenced under Rule 76, which limits discoveries and prohibits cross-examination of witnesses on motions, it should have been obvious

to the plaintiffs that summary judgment was not appropriate because the court would not be able to make the requisite credibility findings on contested issues.

[22] In the circumstances, I find that the plaintiffs acted unreasonably by brining the motion, and costs may therefore be fixed on a substantial indemnity basis pursuant to Rule 20.06(a).

[23] Moreover, the plaintiffs' affidavits were replete with inadmissible hearsay and opinion evidence.

[24] The plaintiffs commenced two parallel proceedings against a different defendant (Unilock) based on nearly identical facts, then settled those actions without disclosing the settlement to the defendants in this case. The settlement clearly has the potential to impact the plaintiffs' claim for damages. The plaintiffs' nondisclosure implies an intent to double recover.

[25] As discussed above, at the hearing of the motion on June 17, 2025, the plaintiffs falsely blamed the defendants for the adjournment of the September 9, 2024 hearing date and falsely claimed that the defendants were in breach of the timetable imposed by Justice Emery.

[26] As discussed above, in their written costs submissions, the plaintiffs made outrageous, unfounded allegations of professional misconduct against the defendants' counsel.

[27] Although I have concluded that the defendants are entitled to costs on a substantial indemnity basis, I am not prepared to award costs in the requested amount of $82,805 for the reasons set out below.

[28] The plaintiffs' claim is for a total of approximately $121,000 in damages. A costs award in excess of $82,000 would be disproportionate to the claim and would exceed the amount of costs that an unsuccessful party could reasonably expect to pay in relation to the motion.

[29] The defendants' Bill of Costs includes some items that should not be indemnified:

[30] Ms. Alam billed 10 hours ($3,500) for attendance at the original motion hearing date of September 9, 2024. The motion was struck from the hearing list that day. Although Ms. Alam attended at the courthouse ready to argue the motion, she could not possibly have spent 10 hours that day on a motion that did not proceed.

[31] Ms. Alam and Mr. Longley both billed 8 hours of preparation ($2,800 and $2,400 respectively) and 10 hours for attendance ($3,500 and $3,000 respectively) at the rescheduled motion hearing date of February 11, 2025. The motion was adjourned that day for reasons set out in Justice Agarwal's Endorsement, with costs in the amount of $1,500 awarded against the plaintiffs. That costs order has been paid. The defendants cannot now seek to recover additional costs associated with the February 11, 2025 hearing date.

[32] A law clerk (Avirag Kaur) billed 1.9 hours ($285) for "binding documents for mediation hearing" but no mediation hearing was conducted in this matter. This entry on the Bill of Costs appears to be in error. I have no reason to believe it to be a "manufactured billing" that raises "ethical issues requiring redress", as claimed by the defendants.

[33] The hourly rates billed by the lawyers who worked on the file for the defendants are reasonable and commensurate with the experience of each lawyer, but the time devoted to the file is excessive and appears to include some unnecessary duplication of effort (e.g. two lawyers billing for attendance at Triage Court).

[34] The defendants' Bill of Costs is detailed, but the time spent by each lawyer is not broken down by task, so it is impossible for me to specify which tasks consumed excessive time. Lead counsel, Ms. Alam, billed a total of 165.5 hours and her co-counsel, Mr. Longley, billed a total of 46.3 hours; their law clerks also billed some time. The delegation of certain tasks to a junior associate and to law clerks was appropriate. However, the overall expenditure of time was excessive given the relatively straightforward nature of the motion. The issues were important to both parties, but not

overly complex. The motion did not require in excess of 200 hours of legal work, particularly since it was brought in the context of a Rule 76 simplified procedure, without discoveries or cross-examinations.

[35] The plaintiffs submitted a Bill of Costs showing that Mr. Tchor (who is a licensed lawyer) spent a total of 170.25 hours on the file. As a self-represented litigant, he would have benefitted from some time savings, such as the lack of time spent meeting with clients. The defendants argue that the plaintiffs must have reasonably expected that they would be required to pay at least $55,331 in costs if their motion was unsuccessful, since that is the amount claimed in their own Bill of Costs.

[36] While I can appreciate the superficial appeal of that argument, I am of the view that a reasonable litigant would not expect to pay that much in costs on a summary judgment motion in a Simplified Procedure action for approximately $121,000 in damages. Like the defendants' counsel, Mr. Tchor devoted excessive time to this motion. The fact that he did so does not justify awarding disproportionate costs to the defendants.

[37] Rule 76.12(1) provides that, except in certain circumstances (outlined in Rule 76.13), no party to a Simplified Procedure action may recover costs exceeding $50,000, exclusive of HST. Although that Rule applies to costs of the action (and not to costs of a motion), it clearly conveys the expectation that costs at every step of a Simplified Procedure action must be contained.

[38] The applicable principles relating to costs in a Simplified Procedure action were discussed in *Culligan Springs Ltd. v. Dunlop Life Truck (1994) Inc.*, 2006 CanLII 13419 (ON SCDC), [2006] O.J. No. 1667 (Div. Ct.)(Q.L.), *Trafalgar Industries of Canada Ltd. v. Pharmax Ltd. (2003)*, 2003 CanLII 40313 (ON SC), 64 O.R. (3d) 288 (S.C.J.), and *Lavinskas v. Jacques Whitford & Associates Ltd.*, 2006 CanLII 22657 (ON SC). Rule 57 of the RCP applies, but the following principles must also be taken into consideration:

[39] The Simplified Procedure rule was introduced to promote affordable access to justice.

[40] Costs awards in Simplified Procedure actions are normally significantly lower than they would be under the ordinary procedure.

[41] Costs incurred in Simplified Procedure actions must be reasonable and proportionate to the amount sought or recovered.

[42] When fixing costs in a Simplified Procedure action, the court must bear in mind the objectives of the Simplified Procedure rule, one being to curb the crippling cost of litigating small claims.

[43] The above principles apply equally to costs determinations relating to a summary judgment motion in a Simplified Procedure action. An award of costs in excess of $82,000 or even in excess of $52,000 in this case would be inconsistent with these principles.

[44] The plaintiffs submit that recent cost awards for similar Rule 76 summary judgment motions have ranged from $10,400 to $20,000, citing *Boyd v. Steele*, 2025 ONSC 1340, *Colley v. Hammoe*, 2025 ONSC 2852, *Mongabadi v. Aurora (Town)*, 2025 ONSC 2881, *Home Trust Co. v. Campbell et al.*, 2025 ONSC 925, and some older decisions. The claims in those cases were for substantially lower amounts (ranging from approximately $30,500 to $57,500 in damages) and costs were awarded on a partial indemnity scale. I have already concluded that the defendants in this motion are entitled to costs on a substantial indemnity scale. The cases relied upon by the plaintiffs are therefore distinguishable. I do not consider the range of $10,400 to $20,000 in costs to be appropriate in this case.

[45] Taking all the above factors into consideration, I conclude that an order for costs in the amount of $35,000, inclusive of disbursements, fees and HST, is proportionate, fair and reasonable in the circumstances of this case.

[46] I therefore order the plaintiffs to pay the defendants' costs on a substantial indemnity basis, in the total amount of $35,000, within 30 days of the date of this Endorsement. Post-judgment interest will apply to any amount outstanding after 30 days.

Dated this 5th day of August 2025,

Petersen J.