

CITATION: Morrison v. Gadomski et al, 2025 ONSC 4558
COURT FILE NOS.: CV-23-00000324-0000 and CV-23-00000410-0000
DATE: August 5, 2025

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: Nancy Eleanor Morrison, in her capacity as Estate Trustee of the
Estate of John Joseph Morrison

AND

Tomasz Gadomski and Caisse Populaire North Bay Limitee

BEFORE: Justice Patrick Hurley

COUNSEL: Mark Pederson, for the Applicant

Joseph D. Kennedy, for the Respondent Tomasz Gadomski

Bradley Jackson, for the Respondent Caisse Populaire North Bay
Limitee

HEARD: In writing

COSTS ENDORSEMENT

- [1] I dismissed the application and granted the counterapplication: 2025 ONSC 3365. The parties were unable to agree on the costs of the proceeding and delivered written submissions.
- [2] They agree that costs should be assessed on a partial indemnity basis. Mr. Gadomski and Caisse Populaire North Bay Limitee (“CPNBL”) are claiming, respectively, \$16,588.93, and \$4,190.17 inclusive of HST and disbursements. Ms. Morrison submits that an appropriate amount is \$5,000 payable to Mr. Gadomski alone.
- [3] At a case conference on November 14, 2024, Muszynski, J. directed the parties to exchange costs outlines in accordance with subrule 57.01(6) before the hearing date and specifically identify the amount of costs which the party was seeking if successful and the amount of costs which they should pay if unsuccessful.
- [4] In her costs outline, Ms. Morrison requested \$21,101.50 if successful and payment of \$5,000 if unsuccessful. Mr. Gadomski’s amount if successful was \$16,580.93 and \$15,000 if unsuccessful. CPNBL’s costs outline identified only one amount – \$4,190.17.
- [5] I will first review the factors enumerated in rule 57.01 that the parties referred to in their costs outlines:

The amount claimed and the amount recovered in the proceeding

The parties did not consider this to be an applicable factor. I do. The Property was purchased for \$310,000 in 2012. The Property has likely increased in value since that date. Ms. Morrison was seeking 50% of its present value. As I dismissed her application and granted the counter application, she recovered nothing.

The complexity of the proceeding

Ms. Morrison considered it simple. Mr. Gadomski considered it somewhat complex. CPNBL described it as reasonably complex. I agree with CPNBL's description. There were competing applications, multiple affidavits, cross-examinations and factums which addressed several legal issues.

The importance of the issues

All parties agreed the issues were very important to them. This was particularly the case for Mr. Gadomski. If he had lost, there would have been a court-ordered sale of the Property where he has operated his business for more than 10 years.

The conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding.

Ms. Morrison makes several complaints about the conduct of Mr. Gadomski, none of which have any merit. Mr. Gadomski does not criticize the conduct of Ms. Morrison. CPNBL does not consider this factor applicable. I agree that it is not a relevant factor.

Whether any step in the proceeding was improper, vexatious or unnecessary, or taken through negligence, mistake or excessive caution.

None of the parties assert that this factor is applicable. I agree.

A party's denial of or refusal to admit anything that should have been admitted.

Ms. Morrison complains that Mr. Gadomski refused to admit the authenticity, relevance, and admissibility of an email from 2012. I did not refer to this document in my written decision but indicated during argument that I did not consider it either relevant or admissible. Mr. Gadomski did not consider this factor applicable nor did CPNBL. I agree with their position.

The experience of the party's lawyer

Mr. Kennedy was called to the bar in 2002, Mr. Jackson in 2017, and Mr. Pederson in 2022.

- [6] Mr. Gadomski made a rule 49 offer to settle the litigation on January 15, 2024. Under this offer, Ms. Morrison would transfer the estate's interest in the Property and Mr. Gadomski would take steps to discharge Ms. Morrison from any liability under the mortgage including the preparation of all necessary legal documents. If Ms. Morrison accepted that offer by January 31, she would not have to pay any legal costs. This was a reasonable proposal.
- [7] I do not understand why Ms. Morrison considered it necessary to include CPNBL as a party nor why she took the position that the Property could potentially be sold for less than the amount owing on the mortgage. There was no chance of this happening even if she was successful in her application. This was unreasonable conduct on her part.

[8] Ms. Morrison does not explain why, as the unsuccessful party, \$5,000 is a reasonable amount in costs when, if she was successful, the amount is \$21,1505.50. Clearly, \$5,000 is not a reasonable amount. It appears to be an arbitrary figure. Justice Muszynski's direction was clear – to identify the *reasonable* costs, not simply the amount which the party would like to pay if unsuccessful.

[9] Ms. Morrison also does not provide any reasons for limiting the payment of costs to Mr. Gadomski. CPNBL is entitled to costs for having to respond to her application. It delivered a responding application record, factum, and compendium.

[10] Overall, costs must be reasonable, considering all relevant factors: *Davies v. Clarington (Municipality)*, 2009 ONCA 722. Epstein, J.A. stated at para. 52:

As can be seen, the overriding principle is reasonableness. If the judge fails to consider the reasonableness of the costs award, then the result can be contrary to the fundamental objective of access to justice. Rather than engage in a purely mathematical exercise, the judge awarding costs should reflect on what the court views as a reasonable amount that should be paid by the unsuccessful party rather than any exact measure of the actual costs of the successful litigant. In *Boucher*, this court emphasized the importance of fixing costs in an amount that is fair and reasonable for the unsuccessful party to pay in the particular proceeding, at para. 37, where Armstrong J.A. said "[t]he failure to refer, in assessing costs, to the overriding principle of reasonableness, can produce a result that is contrary to the fundamental objective of access to justice".

[11] Balancing all the factors and bearing in mind the reasonable expectations of the parties, proportionality, and the overriding principle of reasonableness, I fix the costs at \$16,000 inclusive of HST and disbursements for Mr. Gadomski and \$2,500 all-inclusive for CPNBL. Ms. Morrison shall pay these amounts within 30 days.

Date: August 5, 2025

Hurley, J.

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BEFORE: Justice P. Hurley

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Defendants

COSTS ENDORSEMENT

Hurley, J

Released: August 5, 2025