CITATION: Hermina Developments Inc. v. Epireon Capital Limited et al., 2025 ONSC 6563
COURT FILE NO.: CV-25-00739955-0000
DATE: 20251124

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: HERMINA DEVELOPMENTS INC.

Applicant

AND:

EPIREON CAPITAL LIMITED AND PRO-M CAPITAL PARTNERS INC. (amalgamated with FORSGATE INC. previously known as FORSGATE FUNDING CORPORATION INC.)

Respondent

BEFORE: Koehnen J.

COUNSEL: *Caroline Abela, Claire Copland, Dalal Hjjih* for the Applicant

Eric Golden, Lea Nebel for the Respondents

HEARD: In writing

COSTS ENDORSEMENT

[1] By reasons dated July 9, 2025, indexed as *Hermina Developments Inc. v. Epireon Capital Limited et al.*[1], I granted judgment in favour of the respondents. The respondents now seek their costs of the application which they ask me to fix at $270,292.15. The applicant submits the respondents should not be entitled to costs because of a misleading answer they gave to the court with respect to an issue of importance to the applicant.

[1] *Hermina Developments Inc. v. Epireon Capital Limited et al.* 2025 ONSC 4067.

[2] The general principle is that a successful party is entitled to costs. While the court has the discretion to depart from that principle, the discretion should be exercised sparingly. Courts should not depart from the general principle without good reason. In my view, this is one of those unusual cases.

[3] The traditional factors relevant to costs are well known and are set out in rule 57.01. Additional considerations include whether a party has displayed reprehensible, scandalous or outrageous conduct, including where there has been clandestine behavior, concealment, evasiveness, and deception in the litigation.[2] Examples of the circumstances where courts have departed from the principal include: misconduct of the parties; miscarriage in the procedure; or oppressive and vexatious conduct of proceedings.[3]

[4] The application involved the respondents' ability to sell a property over which it had a mortgage. From early on in the application, the applicant raised concerns that the respondents had always intended to seize the property for themselves in order to develop it for their own benefit. The applicant expressed this concern in its application materials. In response, the respondents stated in their affidavit materials that the proposed purchaser of the property was entirely arm's length to the respondents.

[5] This did not satisfy the applicant. It expressed concern in its factum and oral argument that an individual named Darivoj Vranich was associated with the purchaser. Mr. Vranich was an investor behind the second mortgage that the respondents were enforcing. Over the

[2] *Fodazi v. Koukia*, 2024 ONSC 1121 at paras. 19-20.
[3] *Ehsaan v. Zare*, 2018 ONCA 453 at para. 10.

course of the relationship between the parties, Mr. Vranich had also made a joint venture offer to invest further funds in order to develop the property with the respondents. The applicant was concerned that this sort of relationship was continuing through the proposed purchase.

[6] As a result of those concerns, the court requested the respondents to confirm that the purchaser was entirely arm's-length from the respondents. In response, the respondents advised the court in writing on June 27, 2025 as follows:

> There is no legal or beneficial ownership relationship whatsoever between the Respondents, and (i) the named purchaser for the property and (ii) any investors with the purchaser of the property. There is also no relationship of control between them (eg. directors or officers), and the Respondents and the named purchaser are totally independent of each other. The only potential relationship is one of vendor and purchaser, and one of mortgagee and mortgagor (if the APS closes). This has been confirmed by both the Respondents and the purchaser.

[7] As it turns out, the property was not transferred to the "named purchaser" identified during the course of the proceeding. The respondents now say that the agreement of purchase and sale was assigned to 1001295663 Ontario Inc. ("1001 Co.") after the reasons on the application were released.

[8] Darivoj Vranich now turns out to be at least an officer of 1001 Co. and is perhaps more.

[9] The applicant raised this concern in their cost submissions, and argued that no costs should be awarded to the respondents because of their inaccurate answer to the court on June 27. In their responding cost submissions, the respondents did not address the circumstances of the assignment or the relationship of Mr. Vranich to the new purchaser. Instead, they

suggested that the entire issue was really the fault of the applicant for not having signed a confidentiality agreement. As a result, I wrote to counsel on October 30, 2025 and asked counsel for the respondents to advise, among other things, when the assignment agreement was signed, when discussions about the assignment agreement first began and why the agreement of purchase and sale had to be assigned in the first place.

[10] In response to that email, respondents counsel stated:

a. Mr. Vranich had invested only $600,000 in the second mortgage which reflected only 14% of the second mortgage and only 8% of the total mortgage advances when one takes into account that the second mortgagee bought out the first mortgage.

b. The issue of the sales price is a red herring because there was no credible evidence that the value of the property was greater than the purchase price for which it was sold "regardless of who the principals or shareholders are in the assignee."

c. Respondents' counsel was unaware of the assignment until the applicants raised it.

d. Counsel did "not propose to provide more background into this matter" other than to provide a corporate search and a copy of the assignment agreement entered into on August 1, 2025.

e. The amount of Mr. Vranich's investment in the assignee is not within their knowledge because he is not a client of their firm.

[11] The statement in sub-paragraph 10 (e) is curious because the respondents were able on June 27 to tell the court with confidence that the respondents were independent of both the purchaser and any investors in the purchaser even though those investors were presumably not clients of the respondents' law firm either.

[12] Counsel's response does not address when discussions about the assignment agreement first began and why the agreement was assigned in the first place.

[13] I wish to make clear that I fully accept counsel's statement about their own knowledge and fully accept their statement that they had no knowledge of the assignment or any other information contrary to the submission they made on June 27 as quoted in paragraph 6 above.

[14] The issue, however, is not the knowledge or conduct of counsel. The issue is the knowledge and conduct of the respondents. Given the respondents' lack of answer to when discussions with the assignment first began and why the agreement was assigned and given the respondents' apparent unwillingness to make inquiries into those questions because Mr. Vranich was not a client of the respondents' law firm, even though they appear to have been content to make such inquiries in relation to the email of June 27, I am left with serious doubts about the accuracy of the response provided to the court and serious concerns about the respondents' apparent unwillingness to drill down to provide answers to the court.

[15] In those circumstances, the only way the court has of expressing his dissatisfaction is through cost awards. Where a party declines to cooperate with a request of the court, it must accept the fact that it may be sanctioned with costs.

[16] In coming to this view I have not done any further analysis about the degree to which a different answer than the one quoted in paragraph six above would have made any difference to the end result. That is not the point. The point is that the court asked a question and was given an answer that ultimately turned out to be wrong. The respondents' defence to that allegation is that it was only subsequent events that made the answer wrong; yet the respondents declined to answer questions to test that assertion. The overall circumstances of the case suggest that there is a good possibility that the respondents knew the answer they provided on June 27 was inaccurate and that there was some sort of plan afoot to assign the agreement of purchase and sale even as of June 27.

[17] The respondents could have alleviated that concern by answering the questions in the court's email of October 30. It is the refusal to cooperate that is the reason for the sanction, not the effect or lack of effect of any answer on the end result. Moreover, judicial resources are extraordinarily limited. The court does not have the time or resources to revisit a complex matter to reassess whether different information would have led to a different result; especially not in the absence of cooperation from a party. The simple solution to all of this would have been for the respondents to disclose the assignment as soon as it was being considered and to disclose the possibility of Mr. Vranich's involvement in the purchaser.

[18] In the foregoing circumstances I decline to award costs to respondents even though they would otherwise have been entitled to costs.

Date: November 24, 2025

Koehnen J.