

**CITATION:** Radlett Holdings Inc. v. Zheng, 2025 ONSC 4502  
**COURT FILE NO.:** CV-21-00672123-0000  
**DATE:** 20250801

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

<b>BETWEEN:</b>	)	
	)	
RADLETT HOLDINGS INC. and JAMES	)	<i>Jean DeMarco</i> , for the Plaintiffs
RICHARDSON, DOUGLAS PHIBBS and	)	
DONALD MCQUIGGE in their capacity as	)	
executors of the ESTATE OF WILLIAM	)	
BRIAN GEOFFREY HUMPHRIES	)	
	)	
	)	Plaintiffs
<b>– and –</b>	)	
	)	
YUE QIU ZHENG, also known as ANGELA	)	<i>Sara Erskine and Stephanie Cheung</i> , for the
ZHENG	)	Defendant
	)	
	)	Defendant
	)	
	)	<b>HEARD: In writing</b>

**L. BROWNSTONE J.**

[1] On June 26, 2025, I released my decision granting the plaintiffs a declaration that the defendant holds a sixty percent interest of property known municipally as 1 Mill Walk Court, Richmond Hill, Ontario. The parties have been unable to agree on costs. This is my decision and reasons in respect of costs of the trial.

[2] Fixing costs is a discretionary exercise under s. 131 of the *Courts of Justice Act*, R.S.O. 1990 c C. 43. Rule 57 outlines, in a non-comprehensive list, factors that guide the exercise of this discretion. Relevant factors include the results of the proceeding, the principle of indemnity, the amount an unsuccessful party could reasonably expect to pay, the complexity of the proceeding and the importance of the issues. In addition, offers to settle have costs implications.

[3] Ultimately, I must fix an amount of costs that is proportionate, and that is fair and reasonable for the unsuccessful party to pay: *Boucher v. Public Accountants Council for the Province of Ontario*, 2004 CanLII 14579 (ONCA) at para. 26. A costs award should “reflect what is reasonably predictable and warranted for the type of activity undertaken in the circumstances of the case, rather than the amount of time that a party’s lawyer is willing or permitted to expend”: *Apotex Inc. v. Eli Lilly Canada Inc.*, 2022 ONCA 587 at para. 65.

[4] The plaintiffs seek costs on a partial indemnity basis until March 13, 2023, and substantial indemnity costs thereafter based on an offer to settle made on that date. On this scale, the plaintiffs seek costs of \$162,091.72 plus disbursements of \$16,583.62. They emphasise the importance of the issue to them and their obligations to maximise the estate as estate trustees for a charity. The offer to settle on March 13, 2023, followed several earlier offers. On March 13, 2023, the plaintiffs offered to accept a mortgage of the compromised amount of \$1.1 million and kept earlier offers open as well. Given that the case is not simply monetary, the court should compare whether the offers are comparable, not necessarily equivalent. The plaintiffs argue that the offer is comparable to the result. In contrast, the defendant made no efforts to settle the litigation or negotiate in relation to the various relief sought by the plaintiffs.

[5] The defendant argues the costs should be reduced, given that the plaintiffs abandoned all but the relief for a declaration, and the costs are not reasonable or within the defendant's reasonable expectation. She argues that the plaintiffs' offers did not reflect a genuine compromise, nor are they comparable to the relief granted. The defendant did not engage in any conduct that was reprehensible and that would result in costs on a substantial indemnity scale. The defendant argues that the declaratory relief pursued at trial was not sought in the initial statement of claim, but was only added when the claim was amended in November 2023. This was two years after the original claim was issued, and a year after mediation and discovery were completed. She had to spend significant sums responding to the original claim and preparing for trial for all issues set out in the claim, including the original claim that the funds were advanced as a loan. The claims for judgment of \$1,200,000 and for an equitable mortgage were defended against until abandoned at trial. She suggests the reasonable quantum is \$20,000 to \$25,000 inclusive of taxes and disbursements.

[6] The defendant did not file a costs outline, relying on the Court of Appeal in *Smith Estate v. Rotstein* (2011), 2011 ONCA 491, 106 OR (3d) 161, at para. 50 for the proposition that it did not need to do so as the losing party. However, the Court went on to say that it is preferable that the losing party does so. As noted by Morgan J. in considering this issue, “[w]hat is “fair and reasonable” for the purposes of fixing costs is an objective standard, the best evidence of which is the opposing side’s bill”: *Home Coffee Solutions Ltd. v. Amarshi*, 2024 ONSC 251.

[7] Morgan J. referred to *Halton (Regional Municipality) v. Ohashi*, 2021 ONSC 8399, in which the court held at paras. 15 to 16:

[15] The defendants elected not to file a costs outline and as such the court is left to consider the plaintiff's costs outline without the benefit of knowing what costs were actually incurred by the defendants in responding to the motion. The defendants' costs outline would show what costs the defendants could reasonably have expected to pay in the event they were unsuccessful on the plaintiff's motion.

[16] It has been held that an attack on costs claimed based on excessive time spent is no more than an "attack in the air" where that party has not delivered its own costs outline. It has also been held that the court may rightly infer that the party opposite devoted as much or more time to the proceeding as did the plaintiff in this

case. The failure to deliver a costs outline, when so ordered, may not be determinative of what is a fair and proper amount for costs, but is one factor that may be considered: *Risorto v. State Farm Mutual Automobile Insurance Co.*, 2003 CanLII 43566 (ON SC), 64 OR (3d) 135 (Winkler J, as he then was).

[8] I find that the offer to settle is not sufficiently comparable to invoke the costs consequences of an offer to settle, particularly because of the October 31, 2025, date by which repayment had to be made, regardless of whether the property was sold. That is a substantively different result than achieved by the plaintiffs at trial.

[9] When considering the actions of the parties in the litigation, I accept that, had the plaintiffs proceeded with greater clarity of the relief they were seeking, costs would have been reduced. I also accept that the plaintiffs made genuine efforts to settle the litigation without the necessity of a trial. I find the plaintiffs were willing to compromise to the degree they felt they were able in order to achieve settlement. While I have found they did not “meet or beat” their offer, the offers were in principle similar to the analysis accepted by the court.

[10] Given the defendant’s choice not to submit a bill of costs, there is little basis upon which to assess her reasonable expectations. I do not accept that costs in the range she submits are reasonable or proportionate for a three-day trial, nor do I accept that these were her reasonable expectations. Her argument that the costs claimed were not reasonable would have been able to be properly assessed had she provided her own bill of costs.

[11] On their face, the costs claimed are reasonable for most stages of the litigation. I have discounted the costs claimed on a partial indemnity scale due to the shifting relief sought, which I have found increased the costs unnecessarily.

[12] Therefore, in reviewing the complexity of the case, the value and importance of the litigation, the conduct of the parties as outlined above, and the overriding principles of fairness and proportionality, I order the defendant to pay the plaintiffs costs of \$120,000 inclusive of disbursements and HST.

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L. Brownstone J.

**Released:** August 1, 2025