

indemnity costs against it: *BH Frontier v. Canadian Choice Supply*, 2022 ONSC 3707, at para. 5-6. Spotless was clearly involved in the romance scam.

[5] As outlined in the underlying reasons, fraud was not the ground upon which Mr. Hashiru was found responsible for damages. The plaintiffs were offered to proceed to a summary trial if they wished to prove fraud which they declined to do. Under the circumstances, I do not think substantial indemnity costs are warranted given the limited finding against Mr. Hashiru.

[6] As to the quantum of costs, I have regard to the factors in Rule 57.01 of the *Rules of Civil Procedure*.

[7] While I accept that the billed time is not the beginning or the end of any assessment of costs, I have reviewed the dockets including the rates and hours charged. I find the time spent and the rates charged to be reasonable. This was a very important case for the plaintiffs and involved the need for fast action from the outset and considerable effort, particularly in obtaining the *Mareva* orders. I am cognizant that Justice Morgan in an interlocutory order left those costs to be assessed by me. As such, this assessment of costs incorporates the earlier costs on the *Mareva* injunction. This case was at the higher end of complex. In the circumstances, I accept that substantial indemnity costs of \$100,000 are appropriate as against Spotless and proportionate to the \$2.7 million judgment. It is an amount that a party involved in fraudulent activity such as this ought to expect to pay.

[8] In the case of Mr. Hashiru, the finding was one of unjust enrichment. The fraudulent elements were not pursued. In the circumstances, costs are assessed on a lesser scale and having regard to the award, being a third of what was awarded against Spotless. The unjust enrichment case was more straightforward than the fraud case but was nonetheless more complex than most and was clearly important to the plaintiffs. In the circumstances, I believe the appropriate award is \$60,000 given the proportionate nature of the award and the less complex nature of the successful theory.

[9] Finally, it is necessary to “step back and consider the result produced and question whether, in all the circumstances, the result is fair and reasonable”: *Restoule v. Canada (Attorney General)*, 2021 ONCA 779, 466 D.L.R. (4th) 2, at para. 356. In my view both awards are fair and reasonable in the circumstances.

[10] Accordingly, the plaintiffs are entitled to a costs award of \$100,000 as against Spotless and \$60,000 as against Yahya Dikeni Hashiru. For further clarity, the plaintiffs must account for any costs recovered from either Yahya Dikeni Hashiru or Spotless such that the recovery of costs does not exceed \$100,000.

[11] Finally, I have read the draft order which includes a *Mareva* in aid of execution. I agree that a continuation of the *Mareva* is warranted. There is just as much likelihood that assets will be dissipated now as previously. Spotless has yet to respond, and its assets are yet to be found. This

Mareva includes assets of Mr. Hashiru. While the fraud allegations were unsuccessful, questions remain as to what he has done with the money that was sent to accounts under his control.

[12] However, the request for two years is, in my view, too long. Ordinarily, a judgment is sufficient to allow the party to seize any exigible assets. As it is still somewhat uncertain as to the state of the funds, I accept some interim measure is required to permit execution and the loss of the assets in the interim is a possibility. However, any such order should be constrained to ensure the party seeking enforcement moves with some dispatch and that the court is not unnecessarily restraining assets. I appreciate that seizing any assets may take time. However, the order may be renewed if appropriate and after the court has been apprised as to the steps taken by the plaintiffs to enforce the judgment.

[13] Accordingly, I order that this post-judgment *Mareva* injunction in aid of execution shall be in effect for 9 months from the date of the Judgment, without prejudice to the plaintiffs applying at any time before the expiry of that 9-month period for an order further extending this post-judgment *Mareva* injunction in aid of execution.

[14] I also agree that tracing orders are appropriate regarding the two Ghanaian entities, Best Coastlines Limited and Jadon Shatta Entertainment, because Mr. Hashiru admitted in cross-examination that the funds flowed to at least those two entities.

[15] The plaintiffs may revise the draft Judgment accordingly and submit it for consideration.

Callaghan J.

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