

CITATION: *Caivan (Fox Run) Limited v. Gangwal et al*, 2025 ONSC 6163
COURT FILE NO.: CV-24-94769
DATE: 2025/11/03

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Caivan (Fox Run) Limited, Plaintiff

-and-

Abhishek Gangwal and Suhani Gangwal, Defendants

BEFORE: Justice A. Doyle

COUNSEL: Charlene Kavanagh & Caroline Bedard for the Plaintiff

Sherif Rizk for the Defendants

HEARD: In writing

COSTS DECISION

DOYLE, J.

Overview

[1] On October 21, 2025, the Plaintiff, Caivan (Fox Run) Limited (Caivan) obtained summary judgment for damages in the amount of \$106,012.93 against the Defendants (Abhishek and Suhani Gangwal) for their failure to complete the purchase of a property pursuant to an agreement of purchase and sale (APS) on August 16, 2023.

[2] Amendments to the APS permitted an assignment of the agreement and a right to the Defendants to list the property for sale on Multiple Listing Service (MLS) or other third-party platforms.

[3] On January 11, 2023, the Plaintiff demanded that the Defendants remove the listing of the property on MLS. The Defendants removed the listing on February 7, 2023, and despite being told by Caivan on March 21, 2023 that they could relist the property on MLS, the Defendants told Caivan that the contract was at an end and demanded the return of their deposit.

[4] The court dismissed the Defendants' request for summary judgment against the Plaintiff for negligent misrepresentation, unjust enrichment and breach of contract in the amount of \$125,452.50 and their alternative claim for a return of the deposit of \$75,000 and \$10,452.50 as commissions repaid to the Plaintiff as well as the loss of opportunity for potential profit on resale in the amount of \$40,000.

[5] The court found that there was not an anticipatory breach justifying a termination of the APS when the Plaintiff refused to allow the purchasers to list the property on MLS for a period of approximately two months. The court found that there was not a breach that amounted to a repudiation of the contract nor representations that would entitle the purchasers to a rescission of the agreement.

[6] The court also found that even if the purchasers believed that they had lost an opportunity by the refusal of the Plaintiff to allow the listing, there was no evidence led of how they arrived at the amount of \$40,000.

[7] If the parties were not able to resolve the issue of costs, they were to provide their costs submissions.

[8] Having considered their costs submissions, their bill of costs, and offers to settle and the *Rules of Civil Procedure*, the court awards the Plaintiff costs in the amount of \$10,000.00

Plaintiff's position

[9] The Plaintiff requests \$29,777,87 in costs which would be \$9894.39 on a partial indemnity basis up to the date of its *Rule 49* offer of March 11, 2025, plus \$19,883.48 on a substantial indemnity basis from March 12, 2025, to September 22, 2025, the hearing of the summary judgment.

[10] Their offers to settle show:

- An offer to settle dated March 11, 2025 offering to settle the matter for \$91,132 representing \$74,500 as damages and \$8700 as costs and \$7932 as prejudgment interest;

- On August 25, 2025, the Plaintiff's offer to settle was for an all-inclusive amount of \$47,000. This offer was repeated on September 4, 2025. The Defendants did not accept these offers.

[11] The Defendants' offer to settle dated September 9, 2025 provided that the Plaintiff pay \$75,000 plus costs on a partial indemnity basis. The Plaintiff rejected this offer.

[12] The Plaintiff's offers to settle were *Rule 49* offers and hence the Plaintiff is entitled to costs on a substantial indemnity from the date of the offers to the date of the hearing.

Defendant's Position

[13] The Defendants submit that no costs should be awarded, or costs should be reduced to an amount of \$10,000.

[14] The Defendants submit that they advanced *bona fide* arguments and the court specifically acknowledged that there were legitimate contractual interpretation issues.

[15] The court considered that some of the facts advanced by the Defendants included the following:

- the final amendment formed part of the APS;
- the Plaintiff's January 2023 demand to remove the listing of the property on MLS was mistaken and contrary to the final amendment;
- the court found that the Plaintiff failed in its duty of honest performance; and
- the court acknowledged that the Defendants had a residual claim for damages for the loss of opportunity.

[16] The motion involved mixed questions of fact and law including anticipatory breach, repudiation, and duty of honest performance that justified legal argument.

[17] The Defendants' request for discovery of the Plaintiff's employee was not made in bad faith but was instead an effort to ensure that the court had a full evidentiary record for the summary judgment motion.

[18] The request of costs of \$29,777.87 is 28% of the judgment amount and is disproportional.

[19] The Defendants acted reasonably throughout.

Legal Principles

[20] The costs of a proceeding are in the discretion of the Court (s. 131(1) *Courts of Justice Act*). That discretion must be exercised on a principled basis (*Davies v. Clarington (Municipality)*, 2009 ONCA 722, 100 O.R. (3d) 66, at para. 40). Fixing costs is not merely a mechanical exercise; the amount awarded should, considering all the circumstances, be fair and reasonable (*Boucher v. Public Accountants Council for the Province of Ontario* (2004), 71 O.R. (3d) 291 (C.A.)). In a proper case, costs may be awarded against a successful party (r. 57.01 (2) of the *Rules*).

[21] As stated in *Boucher*, the Court must be fair and reasonable when exercising its discretion to award costs and the parties' expectation concerning the amount of a costs award is a relevant factor to be considered.

[22] Rule 57.01(1) of the *Rules* contains a non-exhaustive checklist of factors that guide the Court in its reasoning when awarding costs in the exercise of its discretion under s. 131 of the *Courts of Justice Act*.

Analysis

[23] For the reasons that follow, the court will fix the amount of costs for the motion in the cause of \$10,000.00

[24] The Plaintiff was successful and is presumptively entitled to costs.

[25] I note that there were a few contractual issues at play.

[26] I also note that the Plaintiff acted unreasonably in misinterpreting the final amendment and demanding that the Defendants take down the listing on MLS. The Plaintiff's communications regarding these demands were assertive and inflexible.

[27] The Plaintiff's position persisted for two months.

[28] The Defendants had negotiated the ability to list the property shortly after the APS was signed.

[29] The Plaintiff's error in their interpretation of the final amendment was the main reason that litigation was commenced. Unfortunately, the Defendants did not call evidence to quantify their loss during the two months that they were not prepared to list the property.

[30] The Defendants were not entitled to consider that the contract was at an end but it certainly caused them to rethink their position.

[31] Given the Plaintiff's conduct, and despite the fact that they were prepared to settle the matter for less than the judgment awarded, this is a case where the court will consider the Plaintiff's unreasonable behavior in determining whether to reduce the amount of the costs award.

[32] I find that the Plaintiffs' actions regarding the final amendment were unreasonable and, although they did not amount to a repudiation of the contract, their actions were central to this litigation.

[33] Pursuant to *Rule* 49.1, the court has discretion with respect to the quantum of costs despite the fact that a party obtained a judgment more favourable than the terms of their offer to settle.

[34] In addition, in exercising its discretion under *Rule* 57.01(1) (i), the court may consider any other matter relevant to the question of costs.

[35] In *Somerville v. Bank of Montreal*, [2012 ONSC 5437 \(CanLII\)](#), at para. 6, Stimson J. awarded a defendant costs on a substantial indemnity scale in the amount of \$9,500.00 for a motion to set aside the noting in default, based on a finding of unreasonable conduct by the plaintiff in the litigation.

[36] Accordingly, I find that the fair and proportionate amount of costs is \$10,000.

Date: November 3, 2025

Justice A. Doyle

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COSTS DECISION

A. DOYLE J.

Released: November 3, 2025