

CITATION: Camino Construction 2016 Inc. v. Graham Construction and Engineering LP,
2026 ONSC 784

COURT FILE NO.: CV-22-689032

DATE: February 9, 2026

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Camino Construction 2016 Inc. v. Graham Construction and Engineering LP and
City of Toronto;

BEFORE: ASSOCIATE JUSTICE C. WIEBE

COUNSEL: David de Groot *for Graham Construction and Engineerin LP;*
Timothy Morgan *for Camino Construction 2016 Inc.*

DECISION: November 24, 2025.

COSTS DECISION

[1] On November 24, 2025 I rendered my decision concerning the motion brought by Graham on September 18, 2025 seeking a stay of the Camino Lien Actions on three grounds: these actions should be stayed as they concern matters that are submitted to arbitration; these actions should be stayed because their issues are duplicated in another action; and these actions should be stayed as the Subcontract requires such a stay until project substantial completion. I granted the third requested stay, but not the others.

[2] Concerning costs, Graham filed a costs outline showing partial indemnity costs totaling \$37,871.27 and substantial indemnity costs totaling \$56,806.92. These numbers appear to exclude HST. Camino filed a costs outline showing partial indemnity costs totaling \$20,544.76 and substantial indemnity costs totaling \$30,817.13. These numbers include HST. At the end of my Reasons I ordered written costs submissions. These have been done.

[3] Graham seeks \$32,000 plus HST (\$36,160) in partial indemnity costs. It derived this number by “normalizing” billing rates for similar years of call in the two bills of costs and averaging the two resulting figures. Graham argues that it deserves costs as it is the successful party.

[4] Camino claims \$13,559.54 in partial indemnity costs (66% of its \$20,544.76 partial indemnity costs), arguing that it is the successful party. In the alternative, Camino argues that, if Graham is awarded costs, its partial indemnity award should be reduced to \$27,871.27 plus HST (\$31,494.53) being Graham’s costs based on the hours Camino spent on this motion, and then reduced further to 33% of that amount to reflect the percentage of Graham’s success on the three stays claimed in this motion. In the further alternative, Camino argues that there be no order as to costs given the divided result.

Result

[5] I find that Graham is the successful party and deserves costs. Costs are not determined on an issue-by-issue basis, but on the overall success of the party; see *Fram Elgin Mills 90 Inc. v. Romandale Farms Limited*, 2021 ONCA 381 (OCA) at paragraph 10.

[6] Graham moved for a stay and succeeded in getting one. The fact that the success was on only one of the three stays claimed and that the ordered stay will be in effect for only seven months must be reflected in a reduction in the quantum of the award; see *Heywood Innovative Solutions Inc. v. The State Group Inc.*, 2025 ONSC 813 (CanLII) at paragraphs 52 and 53. But this lack of Graham success on two of the argued three stays does not denigrate from the fact that Graham succeeded in its overall objective in this motion, namely to get a stay. It deserves costs.

[7] Camino argued that it deserved costs as it succeeded in defeating the Graham claims for “permanent stays” and lost only on the least consequential temporary stay. Alternatively, Camino argued that there should be no order as to costs.

[8] I do not accept these arguments as they mischaracterize the motion. The arbitration and Rule 6.01 stays involved longer stays than the section 106 stay, but neither was permanent. In the end, Graham succeeded in the main purpose of the motion, which was to get some form of a stay of the Camino Lien Actions to allow the triggered alternative dispute resolution processes to unfold and the project to get finished. That success must be recognized.

Reasonable expectation and proportionality

[9] Camino argues that its bill of costs represents the benchmark of what it should reasonably expect to pay in the event of a loss on the motion. Mr. Morgan showed that Graham spent 40 hours more on the motion than did Camino. Furthermore, he showed that Graham spent almost twice the amount of time on this motion than did Camino. Graham spent 94 hours and Camino spent 52 hours. Mr. Morgan argued that there should be a reduction of the Graham entitlement to costs accordingly. Graham did not address this issue.

[10] I find some merit to this argument. The issue is primarily about proportionality. Concerning complexity, the motion had its factual complexities, given all the different claims, alternative dispute resolution claims, arbitration proceedings, civil proceedings and contract provisions. It was a challenge keeping track of all these issues and how they interacted. The legal issues though were not as complex.

[11] Concerning the importance of the motion, on the other hand, the motion was particularly important for Graham given all of the proceedings it is involved with. A stay was critical to Graham’s orderly management of these proceedings. The motion was also important for Camino as it was trying to avoid having its action ground to a halt.

[12] Given these factors, I have decided to accept Graham’s reduction of its partial indemnity claim to \$36,160, not the Camino’s suggested reduction. This is a figure that Camino could reasonably expect to pay in partial indemnity costs had there been no mixed result, given my proportionality assessment.

Ruling

[13] In the end, I have decided to award Graham **\$12,000** in partial indemnity. This is 33% of \$36,160 which is fair and reasonable given the result. Graham was not successful on its arguments concerning the two stays that occupied most of the time and effort of the parties, namely the arbitration stay and the Rule 6.01 stay. The s. 106 stay was the one that occupied the least amount of time and effort.

[14] I order that Camino pay this \$12,000 in partial indemnity costs in **thirty days** from **February 9, 2026**.

DATE: February 9, 2026

ASSOCIATE JUSTICE C. WIEBE