

CITATION: Marshalok v. Nigro, 2025 ONSC 6655
COURT FILE NO.: CV-20-015-00
DATE: 2025-11-28

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Laura Marshalok v. Joanne Nigro

HEARD: Written Submissions

BEFORE: Nieckarz J.

COUNSEL: N. Melchiorre, for the Plaintiff

C. Carr, for the Defendant

ENDORSEMENT ON COSTS

Overview:

[1] This was a three-day trial, in which the Plaintiff claimed she was owed \$57,000 from her mother, on the basis of unjust enrichment. On August 11, 2025, I granted judgment in favour of the Plaintiff in the amount of \$46,200, in addition to pre-judgment interest calculated from February 1, 2018. My reasons and the facts of the case are set out in greater detail in the Reasons for Judgment, reported as *Marshalok v. Nigro*, 2025 ONSC 4653.

[2] The Plaintiff now claims substantial indemnity costs of \$52,860.43, inclusive of fees, disbursements, and H.S.T.

[3] The Plaintiff argues that not only was she the successful party in the litigation, but the amount of the judgment exceeds her offer made on March 31, 2020. She further argues that the

multiple complex issues raised by the Defendant significantly increased the costs of the proceeding, and lengthened the time required for trial.

[4] The Defendant argues that there should be no costs payable. The Defendant argues that the Plaintiff is not the successful party, as her recovery at trial is less than what the Defendant would have otherwise been willing to do for her had she not pursued litigation. The Defendant further argues that the Plaintiff's conduct, particularly in relation to issues raised but not abandoned until the conclusion of trial, unnecessarily caused the Defendant to incur costs. With respect to quantum, she disputes that the matter was overly complex from a legal perspective. She argues that much of the time spent by counsel for the Plaintiff on extensive research was unnecessary, as the issues were primarily factual.

[5] For the following reasons, the Defendant shall pay to the Plaintiff costs in the amount of \$20,000.

Legal Principles:

[6] Pursuant to s. 131(1) of the *Courts of Justice Act*, an award of costs is in the discretion of the judge. It is a wide discretion, to be exercised taking into consideration the factors outlined in Rule 57.01 of the *Rules of Civil Procedure*.

[7] Rule 57.01 lists factors that a judge may consider when exercising discretion under s. 131. I have considered those factors in making this decision.

[8] Furthermore, the Ontario Court of Appeal has made it clear that the fixing of costs is not simply a calculation of hours multiplied by rates. In assessing costs, the overriding principle is one of reasonableness. The court is tasked with fixing an amount that is fair and reasonable for the unsuccessful party to pay. Failure to follow this principle can produce a result that is contrary to the fundamental objective of access to justice (*Boucher v. Public Accountants Council for the Province of Ontario*, (2004), 71 OR (3d) 291 (Ont CA) at paras. 26 and 37).

Analysis:

Entitlement to Costs:

[9] The Plaintiff is the successful party in the action. She is presumptively entitled to her costs.

[10] This case was, like many, extremely sad. It was a dispute between a mother and her only child. The litigation may have put an end to the already fractured relationship. Had the Plaintiff simply waited, her mother had left her the subject property in her Will. I accepted the Plaintiff's evidence that she had no intention of changing that. She has no spouse and no other children. She wanted to benefit her daughter.

[11] From a relationship perspective there were only "losers" in this litigation. From a legal perspective, the Plaintiff was the successful party. While she may have received less from the Judgment than what her mother was willing to bequeath her, that bequest was not certain. Had the Defendant made a binding offer to bequeath the property to the Plaintiff and had there been some certainty as to the value of that offer (the equity valued and could not decrease), then I would be

prepared to accept the Defendant's position on costs. The only offer the Defendant made was for \$10,000 cash. That offer required full and final releases of claims. With the release, if the bequest was changed, the Plaintiff would have no recourse. The Defendant's bequest is too uncertain to be considered in determining costs of this litigation.

Scale of Costs:

[12] The Plaintiff seeks substantial indemnity costs.

[13] In *Davies v. Clarington (Municipality) et al.*, 2009 ONCA 722, the Court of Appeal noted that elevated costs (substantial or full indemnity) are warranted in only two circumstances: (1) where authorized through the operation of an offer to settle under Rule 49.10 of the *Rules of Civil Procedure*; or (2) where the losing party engages in behaviour worthy of sanction. Substantial indemnity costs awards are reserved for rare and exceptional cases: *St. Elizabeth Home Society v. Hamilton (City)*, 2010 ONCA 280, at para. 92.

[14] There is no misconduct that I am aware of that justifies substantial indemnity costs. The only basis on which this level of costs may be awarded is if the Plaintiff's March 2020 offer was better than the result achieved at trial.

[15] The March 31, 2020, offer to settle required the Defendant to pay to the Plaintiff \$42,000 plus full indemnity costs. If not accepted within 30 days, the offer was for \$42,000, plus pre-judgment interest, plus substantial indemnity costs. The Plaintiff states that her costs at that time were nominal, being approximately \$4,500. It is unclear from the submissions as to whether this was inclusive of H.S.T. and disbursements.

[16] Approaching the offer holistically, at first glance the Plaintiff achieved a better result at trial than her March 2020 offer. Having said this, while the offer specified the scale of costs to be paid and how they may be calculated, it did not specify the date from which pre-judgment interest would be calculated or the rate. This remained uncertain. Offers to settle must have sufficient clarity that the party presented with the offer can, with certainty, understand and calculate the amount being offered. That was not the case here. I find that the offer was not sufficiently clear to attract Rule 49 costs consequences after March 31, 2020. Despite this, Rule 49.13 still permits me to consider the offer in exercising my discretion with respect to costs.

[17] For the foregoing reasons, costs shall be payable on a partial indemnity basis. Partial indemnity fees claimed are \$32,753.56 inclusive of H.S.T., in addition to \$2,470.34 for disbursements.

Quantum:

[18] The question now becomes, what is a fair and reasonable amount for the unsuccessful party to pay. In determining this, I have considered the Rule 57 factors.

[19] I agree with the Defendant that the legal issues were not overly complex. The facts made the limitations issues somewhat more complex. Contrary to the Plaintiff's submissions, this was not an unreasonable issue to be raised by the Defendant. The law was quite clear but the application of the facts was the difficult part.

[20] Having heard the evidence of the parties at trial, it was clear that the parent/child dispute also, at times, detracted from the legal issues. Both parties bear some responsibility for the length

of the trial and for additional costs being incurred for preparation. There were a lot of relationship issues that entered this trial. I remain unclear as to the relevance of the evidence of the father of the Plaintiff (ex-spouse of the Defendant) other than the ex-spouse's desire to side with his daughter and against his ex-wife. The oral evidence of Mr. Marshalok was largely, but not entirely, unhelpful in resolving the issues in dispute. What was required from him was simply the work he did with respect to the property at issue.

[21] I also found the Defendant's position that the Plaintiff had only tendered proof of \$6,000 in payments, untenable given her admission in her evidence that she knew it was more than that, and given the admission made in her Statement of Defence. This resulted in wasted time.

[22] The Plaintiff must also bear some blame for raising issues that either were untenable or not pursued. The breach of contract claim, in particular. This caused the Defendant to incur additional costs.

[23] Otherwise with respect to quantum, and keeping in mind that this was a simplified rules claim, I find:

- a. The issues were important and significant to the parties, but proportionality must be considered.
- b. The actual hourly rate charged by the Plaintiff's counsel changed over the duration of the file, from \$275 per hour to \$350 per hour, all of which are reasonable given the experience of counsel. Given the experience of counsel, there is an expectation that tasks be completed in an efficient manner. Junior counsel rate ranged from \$100 – 200 per hour, which is also reasonable.
- c. A number of the entries on the Bill of Costs do not strike me as appropriate for an unsuccessful party to pay on a partial indemnity basis. For example, calls to other lawyers (not opposing counsel) with no explanation, tasks that are more administrative in nature

(setting up examinations, emailing the court re pre-trial dates), and duplication between senior and junior counsel without any explanation for the duplication. While all of these may be recoverable as between lawyer and client pursuant to the terms of the retainer agreement, they are not recoverable on the circumstances of this case from the unsuccessful party.

- d. There are several disbursements claimed that are administrative and should not be visited upon the unsuccessful party, such as laser printing, ACL3 (I do not know what this is, and facsimile charges.

[24] I find that a fair and reasonable amount of costs to award the Plaintiff on a partial indemnity basis for this matter is \$20,000 inclusive of fees, disbursements, and H.S.T.

Order:

[25] The Defendant shall pay to the Plaintiff costs in the amount of \$20,000.

“Original signed by”
The Honourable Madam Justice T.J. Nieckarz

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