

CITATION: Frei v. Frei, 2025 ONSC 7017
COURT FILE NO.: CV-23-00002579-0000
DATE: 2025-12-15

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N :)
)
Carlo Frei, Sven Frei and Tannenfels) Jack Masterman and Mackenzie Laforet
Company Inc.) for the Plaintiffs/Moving Parties
)
)
Plaintiffs/Moving Parties)
)
- and -)
)
)
Evelyn Frei, Ulrich Frei, Frei Family) D. John Kirby,
Holdings Inc. and European Warmblood) for the Defendants/Responding Parties
Stallion Zentrum Inc.)
)
Defendants/Responding Parties)
)
)
) **HEARD:** In Writing

2025 ONSC 7017 (CanLII)

DECISION ON COSTS

Justice E. ten Cate

[1] This decision on costs follows my Reasons for Decision¹ dated October 23, 2025, in which I determined that the interim injunction and certificate of pending litigation ordered on an interim basis by Gorman J. on October 22, 2024, shall continue until trial.

¹ *Frei v. Frei*, 2025 ONSC 6014.

[2] The general rule in Ontario is that a successful party is entitled to costs.² In other words, costs should follow the result of the litigation unless there is good cause to do otherwise.³

[3] The Plaintiffs seek partial indemnity costs in the amount of \$66,665.59 plus disbursements of \$8,025.37, whereas the Defendants submit that any cost award should be in the cause, or alternatively at the “lower end of the scale”.

[4] There is no mandatory rule requiring that the question of costs should be reserved to the trial judge when a plaintiff succeeds in obtaining an interlocutory injunction. Rather, the motion judge retains discretion with respect to the issue of costs.⁴

[5] The motions court judge will typically award costs where (1) the trial on liability is not highly probable; or (2) the plaintiff has established a strong *prima facie* case against the defendants; or (3) the conduct of the defendant was egregious; or (4) the plaintiff had to engage in lengthy and expensive investigations and litigation procedures in order to expose the defendant’s misconduct; or (5) the plaintiff was substantially successful on the most important issues.⁵

[6] An additional consideration is that the motions judge is in a better position to fix the costs of a motion than the trial judge.⁶ I note that Gorman J. reserved the costs of the interim motion before her to the judge hearing the interlocutory motion, rather than to the trial judge.

[7] In my view, it is appropriate for me to fix costs of the interim motion and interlocutory motion because:

1. I determined that there was no question that the issues to be tried are serious – whether there was an agreement to transfer the business to the Plaintiffs, and whether the Plaintiffs can recover damages for unjust enrichment.⁷ While an injunction was not a foregone conclusion, it was certainly highly likely;

² *Courts of Justice Act*, RSO 1990, c. C.43, s. 131; *Rules of Civil Procedure*, RRO 1990, Reg. 194, Rule 57.

³ *Rowswell & Associates Engineers Ltd. v. Brandt*, (2002) OJ No. 344 (ONSC), at para. 3.

⁴ *Fodazi v. Koukia*, 2024 ONSC 1121, at para. 15.

⁵ *Amphenol Canada Corp. v. Sundaram*, 2019 ONSC 2226, at para. 9.

⁶ *Fodazi v. Koukia*, *ibid*, at para. 16.

⁷ *Frei v. Frei*, *ibid*, at para. 20.

2. It remains to be proven at trial whether the Defendants' behaviour was "egregious" but there is certainly some evidence that they attempted to charge one of the Plaintiffs criminally in response to a demand letter and that they may have attempted to liquidate assets;
3. It was necessary for the Plaintiffs to engage in extensive litigation to protect any interest they may have in the assets; and
4. The Plaintiffs successfully obtained interim and then interlocutory relief which prohibits the Defendants from disposing of the assets of the business without providing relevant information to the Plaintiffs, and a certificate of pending litigation was continued respecting the real property.

[8] I now turn to the quantum of costs.

[9] According to Rule 57.01(1)(0.b)⁸, one of the factors I may consider, in addition to the result in the proceeding, is the amount of costs that an unsuccessful party could reasonably have expected to pay in relation to the step in the proceeding for which costs are being fixed.

[10] The Defendants do not take issue with the amounts in the cost outline submitted by the Plaintiffs; they did not submit their own for comparison. Instead, they take issue with the Plaintiffs' claims of total success.

[11] I find that the Plaintiffs were largely successful at both the interim and interlocutory motion stages and I award costs to the Plaintiffs in the amount of \$50,000 plus disbursements in the amount of \$339 for a total of \$50,339.

[12] Since the parties agreed the transcripts from the cross-examinations will form part of the discoveries, I reserve the issue of the cost of the transcripts to the judge hearing the trial.

Justice E. ten Cate

Released: December 15, 2025

⁸ *Rules of Civil Procedure, ibid.*

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Plaintiffs/Moving Parties

- and -

Evelyn Frei, Ulrich Frei, Frei Family Holdings
Inc. and European Warmblood Stallion
Zentrum Inc.

Defendants/Responding Parties

DECISION ON COSTS

ten Cate J.

Released: December 15, 2025