

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:** )  
 )  
 JOSHUA CONNELLY )  
 ) Plaintiff ) Paul Bragagnolo and Amélie Pelletier, for  
 ) the Plaintiff  
 )  
 – and – )  
 )  
 FRANCIES GARITO and PENELOPE ) Self-Represented Defendants  
 GARITO )  
 )  
 Defendants )  
 )  
 )  
 )  
 )  
 ) **HEARD:** In writing

2026 ONSC 96 (CanLII)

**REASONS FOR DECISION - COSTS**

**CULLIN J.**

- [1] This matter appears before me to address the issue of costs.
- [2] This action arises from a real estate transaction between the plaintiff and the defendants. The plaintiff purchased a residential property from the defendants. Within months of the purchase, he began to encounter difficulties. He commenced this action seeking damages for negligent construction and negligent misrepresentation.
- [3] Following a three-day trial, I awarded damages to the plaintiff in the amount of \$41,383.67. This represented a mixed result for the plaintiff, who was awarded damages with respect to some of the claimed structural issues in the property but not others.
- [4] In my reasons for decision, I invited submissions regarding prejudgment interest and costs from the parties within (30) days of the decision. I have now received submissions from both the plaintiff and the defendants.

[5] The plaintiff requests prejudgment interest in the amount of \$6,233.45 from the commencement of the action, based upon the rates provided pursuant to the *Courts of Justice Act*, R.S.O. 1990, c.C.43. He further requests substantial indemnity costs in the amount of \$24,293.59, plus disbursements in the amount of \$2,421.55.

[6] The defendants request that no prejudgment interest or costs be awarded as they are impecunious and do not have the ability to pay the judgment, much less any additional amounts ordered by the Court.

[7] Pursuant to s. 131 of the *Courts of Justice Act*, the award of costs is solely within the discretion of the Court.

[8] An award of costs must reflect an amount that is fair and reasonable having regard to the individual circumstances of a case: *Boucher v. Public Accountants Council (Ontario)*, 2004 CanLII 4579. Costs are intended to indemnify a successful party for the expense of being compelled to seek the assistance of the Court to resolve a dispute: *British Columbia (Minister of Forests) v. Okanagan Indian Band*, 2003 SCC 71, paras. 19-21.

[9] The factors to be applied by the Court in exercising its discretion are enumerated in Rule 57.01 of the *Rules of Civil Procedure*. As a general rule, costs are awarded having regard to the principle of indemnity; that is, they are payable to the successful party by the unsuccessful party. Other factors to be considered by the Court include: (i) the amount claimed and recovered in the proceeding; (ii) the complexity of the proceeding; (iii) the importance of the issues; (iv) the conduct of the parties; and, (v) whether any step was improper, vexatious or unnecessary.

[10] Offers to settle exchanged between the parties during the proceeding are also a relevant consideration. Pursuant to Rule 49.10, subject to certain conditions, a party who obtains a judgment as or more favourable than their offer to settle is entitled to partial indemnity costs up to the date of the offer and substantial indemnity costs from the date of the offer.

[11] With respect to the issue of prejudgment interest, the plaintiff has provided a chart calculating prejudgment interest from the date of issuance of the claim. I accept that calculation, and I find that interest in accordance with the *Courts of Justice Act* is appropriate. Prejudgment interest will therefore be awarded in the amount of \$6,233.45 up to the date of judgment, which is November 18, 2025. Thereafter, the judgment will be subject to post-judgment interest in accordance with the *Courts of Justice Act*.

[12] Addressing next the issue of costs, I note that the plaintiff served an offer to settle, dated August 15, 2023. That offer proposed to settle the action for \$35,000 in damages, plus costs fixed in the amount of \$10,000. The plaintiff exceeded this offer at trial. The defendants made no offer to settle in advance of trial.

[13] While I am sympathetic to the defendants' financial circumstances, it must be acknowledged that they made no effort to resolve this action short of a trial, and their position was ultimately not accepted at trial. The plaintiff is presumptively entitled to costs pursuant to Rule 49.10, and in my view there are no circumstances which would warrant a departure from that rule. The plaintiff conducted the litigation reasonably and made a reasonable offer to settle

which reflected his risks at trial. The defendants elected to take a principled position based upon their view of the facts and were unsuccessful; while they were entitled to take that position, they must now bear the consequences of that decision.

[14] The plaintiff submitted a Bill of Costs in support of his position on costs. Overall, I find that the hours and fees claimed for legal services provided is reasonable. The Bill of Costs does not, however, distinguish between fees for services prior to the offer to settle and fees for services following the offer to settle.

[15] All pretrial attendances, including the pretrial conference, were conducted prior to service of the offer to settle. Mr. Bragagnolo's time was exclusively allocated to the trial. Ms. Pelletier's time was allocated to all aspects of the file, including the trial.

[16] I will allow Mr. Bragagnolo's fees on a substantial indemnity basis, and I find that his substantial indemnity rate of \$450.00 per hour is reasonable. Ms. Pelletier has claimed 39.1 hours; I will allow 2/3 or 26.1 hours on a partial indemnity basis, and the remaining 13 hours on a substantial indemnity basis. I find Ms. Pelletier's substantial indemnity rate of \$337.50 to be reasonable, and I will allow a partial indemnity rate of \$225.00 per hour.

[17] With respect to disbursements, I would allow all disbursements claimed except the LSO Transaction Levy (\$100) which is not recoverable under the Tariff. I am allowing the postage and purulator costs as I understand that some materials were required to be served on the defendants in this manner because they were self-represented.

[18] In the circumstances, I order that the defendants shall pay the costs of this action to plaintiff as follows:

- a. The defendants shall pay costs to the plaintiff totalling \$21,034.36, which are allocated as follows:
  - i. The sum of \$5,872.50 plus HST in the amount of \$763.43 representing partial indemnity costs to the date of the plaintiff's offer to settle;
  - ii. The sum of \$10,687.50 plus HST in the amount of \$1,389.38 representing substantial indemnity costs from the date of the plaintiff's offer to settle to trial;
  - iii. Disbursements in the amount of \$2,321.55, inclusive of HST.

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Cullin, J.

**CITATION:** Connelly v. Garito, 2026 ONSC 96

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

JOSHUA CONNELLY

Plaintiff

– and –

FRANCIES GARITO and PENELOPE GARITO

Defendants

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**REASONS FOR DECISION - COSTS**

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Cullin J.

**Released:** January 6, 2026