

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:** )  
 )  
BDO Canada Ltd. in its capacity as trustee ) R. Fisher, for the Plaintiff  
in bankruptcy of the Estate of Toppits Foods )  
Limited )  
 )  
Plaintiff )  
 )  
– and – )  
 )  
2141354 Ontario Ltd. o/a Heng Sing and ) B. Romano and J. Nussbaum, for the  
Yan Na Li ) Defendants  
Defendants )  
 )  
 )

**The Honourable Justice J. R. Henderson**

**COSTS DECISION**

- [1] This is my decision regarding the costs of two motions in this proceeding, specifically the summary judgment motion brought by the plaintiff BDO Canada Ltd. (“BDO”) for judgment against the defendant 2141354 Ontario Ltd. o/a Heng Sing (“214”), and the motion brought by the defendant Yan Na Li (“Ms. Li”) for an order dismissing the action against her personally.
- [2] By way of background, BDO, in its capacity as the trustee in bankruptcy for Toppits Foods Limited (“Toppits”), commenced this action against 214 and Ms. Li, the principle of 214. The claim related to eight unpaid invoices that were rendered by Toppits regarding the sale of frozen seafood products by Toppits to 214. The two defendants were represented by the same law firm and filed a joint Statement of Defence.
- [3] BDO brought a motion for summary judgment against 214, and that motion was dismissed pursuant to my written reasons dated February 12, 2026. At approximately the same time, Ms. Li brought a motion for an order dismissing the action against her. BDO consented to Ms. Li’s dismissal motion, subject to the court’s decision regarding costs.
- [4] 214 requests its costs against BDO for the summary judgment motion on a partial indemnity scale to the date of 214’s offer to settle and on a substantial indemnity scale

thereafter in the total amount of \$33,472. Ms. Li requests her costs of the dismissal motion in the total amount of \$6,293 on the same basis.

- [5] The defendants, 214 and Ms. Li, were the successful parties with respect to these two motions. Therefore, the defendants are presumptively entitled to their costs.
- [6] Regarding the summary judgment motion, 214 relies on rule 49.10 and its offer to settle dated August 13, 2025, to support its request for costs on a substantial indemnity basis from the date of the offer.
- [7] However, I note that 214's offer to settle was for a complete dismissal of the summary judgment motion. In my view, an offer to settle a motion based upon the complete capitulation by the opposing litigant is not an offer that would normally justify an increased scale of costs. Although in this case 214's offer included a term that there would be no costs, I find that the offer was not a significant compromise such that substantial indemnity costs would be appropriate.
- [8] Further, I find that BDO's summary judgment motion was a legitimate attempt by the plaintiff to resolve a commercial dispute in an efficient manner. The evidence showed that invoices were sent by Toppits, that the invoices were received by 214, and that the invoices remain unpaid. The difficulty on the summary judgment motion related to the absence of evidence that might establish the creation of the contract(s), and the ancillary credibility issues. Thus, I found that these issues required a trial.
- [9] In addition, I find that the summary judgment motion was clearly important to both parties, but that the complexity of the motion was in the moderate range.
- [10] For these reasons, on BDO's summary judgment motion, I find that costs should be payable by BDO to 214 on a partial indemnity scale. Having reviewed the bill of costs submitted by 214, I fix the fees payable at \$15,000, plus HST of \$1,950, plus disbursements of \$979.63. Therefore, the total costs payable for the summary judgment motion will be fixed at \$17,929.63.
- [11] Regarding Ms. Li's dismissal motion, I accept BDO's submission that much of the work done on behalf of Ms. Li regarding the dismissal motion was subsumed in the work done on behalf of 214 regarding BDO's summary judgment motion.
- [12] Ms. Li and 214 were represented by the same law firm. The two motions involved the same witnesses and the same documents. Further, Ms. Li was produced as the representative of 214 in the action. The only additional element in Ms. Li's motion was the legal argument that Ms. Li was not personally responsible for the legal obligations, if any, of 214.
- [13] The defendants are not entitled to double recovery of their costs. As discussed above, 214 will be compensated for its costs with respect to BDO's summary judgment motion. I find that Ms. Li's costs that are not covered by the costs award in the summary judgment motion are not substantial.

- [14] I also accept that, before the motion record was prepared for Ms. Li's motion, BDO's counsel informed defence counsel that BDO would consent to an order dismissing the action against Ms. Li. However, I acknowledge that, even with BDO's consent, some legal work was required to prepare a record and the appropriate documentation to obtain the order.
- [15] Regarding the scale of costs for Ms. Li's motion, defence counsel again submits that its offer to settle dated August 13, 2012, in which Ms. Li offered to consent to a dismissal of the action against her without costs, justifies an increased scale of costs. For the reasons set out above, I find that substantial indemnity costs are not appropriate.
- [16] For these reasons, I assess the costs for work done by defence counsel that is solely related to Ms. Li's motion, on a partial indemnity scale, at \$1,500, plus HST of \$195, plus the court filing fee of \$339. Therefore, the total costs payable for Ms. Li's dismissal motion will be fixed at \$2,034.
- [17] In conclusion, I order that BDO pay to 214 its costs of BDO's summary judgment motion in the amount of \$17,929.63, payable within 60 days. I further order that BDO pay to Ms. Li the costs of Ms. Li's dismissal motion in the amount of \$2,034, payable within 60 days.

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J. R. Henderson J.

**Released:** March 10, 2026

**CITATION:** Toppits Foods Limited Estate v. 2141354 Ontario Ltd., 2026 ONSC 1454  
**COURT FILE NO.:** CV-24-00088109-0000  
**DATE:** 2026-03-10

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

BDO Canada Ltd. in its capacity as trustee in  
bankruptcy of the Estate of Toppits Foods Limited

Plaintiff

– and –

2141354 Ontario Ltd. o/a Heng Sing and Yan Na Li

Defendants

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**COSTS DECISION**

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J. R. Henderson J.

**Released:** March 10, 2026