

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Anne Louise Craig, Plaintiff

-and-

Carl Heinz Weidhaas and Sherri Lynn Weidhaas, Defendants

BEFORE: MacNeil J.

COUNSEL: *Dennis Touesnard* – Lawyer for the Defendant, Sherri Lynn Weidhaas

Birkin J. Culp – Lawyer for the Defendant, Carl Heinz Weidhaas

HEARD: November 25, 2025

DECISION ON COSTS

[1] The plaintiff is the mother of the defendant, Sherri Lynn Weidhaas (“Ms. Weidhaas”). The plaintiff sued both defendants for an interest in the property known municipally as 88 Lynden Hill Crescent (“the Property”). Ms. Weidhaas filed a defence to the claim and cross-claimed as against her husband, the co-defendant, Carl Heinz Weidhaas (“Mr. Weidhaas”). Both defendants subsequently accepted an offer to settle served by the plaintiff and the main action has been resolved. Ms. Weidhaas is now seeking her costs of the main action and the crossclaim from Mr. Weidhaas.

[2] At the hearing before me, counsel for each of the two defendants made submissions on costs, and bills of costs were submitted on behalf of both.

Background

[3] On May 21, 2002, the defendants became the registered owners of the Property as joint tenants. The Property was purchased for \$240,000.00. The plaintiff and her late husband paid the sum of \$100,000.00 towards the purchase of the Property. The plaintiff pleaded in the statement of claim that, at the time of the Property’s purchase, everyone had agreed that she and her late husband would be entitled to a 40% equitable ownership interest in the Property in exchange for their \$100,000.00 contribution.

[4] After its purchase, the plaintiff and her late husband moved into the Property and paid to the defendants a monthly amount towards the carrying costs of the Property, including utilities, insurance and cable.

[5] The plaintiff's husband died on June 12, 2020. Following his death, the plaintiff remained living at the Property.

[6] The defendants subsequently separated. The plaintiff became concerned that the Property could be sold or encumbered without her knowledge or consent. When the defendants refused to acknowledge her 40% ownership interest, the plaintiff commenced the within action on July 10, 2020.

[7] Mr. Weidhaas served a statement of defence, dated August 17, 2020. (He did not crossclaim as against Ms. Weidhaas.)

[8] Ms. Weidhaas served a statement of defence and crossclaim on January 10, 2024. Mr. Weidhaas defended against the crossclaim.

[9] At the hearing, the court was advised that the parties attended at examinations for discovery and a pre-trial conference.

[10] The plaintiff served an offer to settle the proceeding, dated September 22, 2025 ("the Offer to Settle"), which set out three options which can be summarized as follows:

- (a) Option A provided that the plaintiff would be vested a 40% interest in the Property and steps would be taken to add her as a registered owner to the Property as a tenant-in-common.
- (b) Option B provided that the Property would be listed for sale and sold and the plaintiff would receive 40% of the net proceeds of sale of the Property.
- (c) Option C provided that the Property would be listed for sale and sold and the plaintiff would receive a total amount of \$125,000.00 from the net proceeds of sale.

[11] Paragraph 13 of the Offer to Settle stated:

13. If this Offer to Settle is accepted by October 6, 2025, there shall be no costs payable by any party. If this Offer to Settle is accepted after October 6, 2025, then costs shall be paid on a partial indemnity basis in an amount to be agreed upon or determined by a judge, of the Superior Court of Justice, at Brantford, on motion by any party.

[12] The Offer to Settle was open for acceptance until otherwise revoked by notice in writing and expired one minute after trial commencement.

[13] On October 1, 2025, by correspondence sent, Ms. Weidhaas accepted each of the three options presented in the Offer to Settle on the condition that no costs were sought against her.

[14] The plaintiff's Request to Admit was served on October 16, 2025.

[15] On October 20, 2025, by correspondence and a signed Acceptance of Offer to Settle sent, Mr. Weidhaas accepted Option C presented in the Offer to Settle.

[16] The settlement reached gives the plaintiff priority to certain net proceeds of the sale of the Property, when it sells, ahead of the defendants for the amount of \$125,000.00.

[17] At the hearing, counsel for Mr. Weidhaas advised that the issue of costs as between the plaintiff and Mr. Weidhaas has been settled with Mr. Weidhaas agreeing to pay costs to the plaintiff in the amount of \$15,403.44 respecting the action, to be paid from his share of the net proceeds of the Property.

[18] No offer to settle has been served respecting the crossclaim.

Issues

[19] The following issue is to be determined: Is Ms. Weidhaas entitled to costs of the action and the crossclaim from Mr. Weidhaas and, if so, in what quantum?

Position of Sherri Weidhaas

[20] Counsel for Ms. Weidhaas submits that, while the main action against the defendants has been settled, the crossclaim is still unresolved but the only live issue requiring determination is that of costs. Ms. Weidhaas is no longer seeking contribution and indemnity as against Mr. Weidhaas.

[21] It is the position of Ms. Weidhaas that she is entitled to her partial indemnity costs of the action and the crossclaim from Mr. Weidhaas. She seeks the amount of \$28,160.50, which includes disbursements in the amount of \$1,833.42.

[22] Ms. Weidhaas submits that she was entirely aligned with the plaintiff throughout the proceedings. Her parents had advanced the \$100,000.00 sum with the intention that they would have an interest in the Property proportionate to the amount advanced, which was 40% of the purchase price. Mr. Weidhaas defended the action on the basis that the \$100,000.00 sum advanced was a gift.

[23] By her crossclaim, Ms. Weidhaas had sought her costs throughout the entirety of the proceeding. Had Mr. Weidhaas accepted the plaintiff's Offer to Settle before October 6, 2025, the costs consequences would have ended. He did not accept the offer by that date. That date was not randomly chosen. It was just prior to the commencement of the scheduled trial sitting. So, when the deadline passed, Ms. Weidhaas incurred legal costs preparing for trial.

[24] Ms. Weidhaas submits that she incurred legal fees over the course of several years, including for the drafting of pleadings, attending discoveries, attending a pre-trial conference, and preparing for trial.

[25] It is submitted that the plaintiff's interest in the defendants' matrimonial home was an important issue to all of the parties and it needed to be resolved, especially as it impacted on the

defendants' Family Law proceeding. Costs could have been avoided if Mr. Weidhaas had agreed to settle earlier. Ms. Weidhaas could not settle and exit the litigation independent of Mr. Weidhaas since they are joint owners of the Property. She had no choice but to defend as against the action and participate in the proceeding.

[26] Ms. Weidhaas submits that her costs of the crossclaim are not separate and independent from her costs of the main action. They are interconnected. The plaintiff's offer did not extinguish the crossclaim and Mr. Weidhaas did not make his acceptance of the plaintiff's offer contingent on a dismissal of the crossclaim.

[27] Ms. Weidhaas submits that, since her position was aligned with the plaintiff's position from the beginning of the litigation and since the plaintiff was successful in settling the main action, Ms. Weidhaas should also be considered to be similarly successful in the crossclaim. As a result, she is entitled to fair and reasonable costs.

Position of Carl Weidhaas

[28] It is the position of Mr. Weidhaas that the only costs legitimately claimed from him by Ms. Weidhaas are those resulting from the 19-day delay between October 1, 2025, the day Ms. Weidhaas accepted the plaintiff's Offer to Settle, and October 20, 2025, the day when Mr. Weidhaas accepted the offer.

[29] In her statement of defence and crossclaim, Ms. Weidhaas basically agreed with what the plaintiff alleged and sought in terms of relief. However, in her statement of claim, the plaintiff did not seek that the Property be sold. She had asked for a 40% vesting order or, in the alternative, a beneficial ownership declaration or, in the further alternative, \$100,000.00 from the defendants.

[30] Mr. Weidhaas submits that he should not be held responsible for the costs incurred by Ms. Weidhaas from the commencement of the litigation to October 1, 2025, including the initial investigation and pleadings. He asserts that the costs claimed by Ms. Weidhaas for discovery and the pre-trial conference are very high for a party who essentially agreed with the plaintiff throughout. Further, the parties had not yet been called to trial during the sitting which was commencing October 14, 2025, so there should be limited trial preparation costs.

[31] The costs amount being sought by Ms. Weidhaas is excessive. It is also disproportionate to the amount of legal costs Mr. Weidhaas must pay to the plaintiff and it was the plaintiff who was "carrying the water" in the proceeding, not Ms. Weidhaas.

[32] Unlike the plaintiff, Ms. Weidhaas did not obtain any court order against Mr. Weidhaas. Ms. Weidhaas is not seeking contribution or indemnity from Mr. Weidhaas of the \$125,000.00 settlement amount. By way of the settlement, the plaintiff will be receiving the \$125,000.00 jointly from both defendants

[33] While counsel for Mr. Weidhaas initially requested that any costs amount awarded to Ms. Weidhaas be payable out of the net proceeds of the sale of the Property and not forthwith, that request was withdrawn when counsel for Ms. Weidhaas objected to it.

General Principles

[34] Section 131(1) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 provides that an award of costs is in the discretion of the court.

[35] Rule 57.01(3) of the *Rules* provides that, when the court awards costs, it shall fix them in accordance with subrule (1) and the Tariffs. Tariff A establishes the fees and disbursements that are allowable under rules 57.01 and 58.05.

[36] Rule 57.01(1) sets out factors to be considered by the court in exercising its discretion to award costs, including:

- the result in the proceeding;
- any offer to settle or to contribute made in writing;
- the principle of indemnity, including, where applicable, the experience of the lawyer for the party entitled to the costs as well as the rates charged and the hours spent by that lawyer;
- the amount of costs that an unsuccessful party could reasonably expect to pay in relation to the step in the proceeding for which costs are being fixed;
- the amount claimed and the amount recovered in the proceeding;
- the complexity of the proceeding;
- the importance of the issues;
- the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding;
- whether any step in the proceeding was: (i) improper, vexatious or unnecessary, or (ii) taken through negligence, mistake or excessive caution;
- a party's denial of or refusal to admit anything that should have been admitted; and,
- any other matter relevant to the question of costs.

[37] Rule 1.04(1.1) provides that, in applying the rules, the court shall make orders and give directions that are proportionate to the importance and complexity of the issues, and to the amount involved, in the proceeding.

[38] Modern costs rules are designed to advance five main purposes: (1) to indemnify successful litigants for the cost of litigation, although not necessarily completely; (2) to facilitate access to justice, including access for impecunious litigants; (3) to discourage frivolous claims and defences; (4) to discourage and sanction inappropriate behaviour by litigants; and (5) to encourage settlements: *Fong v. Chan*, 1999 CarswellOnt 3955, 128 O.A.C. 2 (Ont. C.A.), at para. 22; 394 *Lakeshore Oakville Holdings Inc. v. Misek*, 2010 ONSC 7238, at para. 10.

[39] Ultimately, in fixing costs, the primary principles remain fairness, reasonableness and proportionality. The court is not engaged in a detailed fact-finding exercise but rather in applying the factors set out in rule 57.01 in a summary manner. As stated by the Ontario Court of Appeal in *Boucher v. Public Accountants Council (Ontario)* (2004), 71 O.R. (3d) 291 (Ont. C.A.), at para. 26, when fixing costs, the calculation of hours and time rates is only one factor to be taken into account. The overall objective is “to fix an amount that is fair and reasonable for the unsuccessful

party to pay in the particular proceeding, rather than an amount fixed by the actual costs incurred by the successful litigant.” (See also *Zesta Engineering Ltd. v. Cloutier*, 2002 CarswellOnt 4020, [2002] O.J. No. 4495 (Ont. C.A.), at para. 4.)

[40] A crossclaim is a separate action or proceeding from the main action: rule 1.03, *Rules of Civil Procedure*.

Analysis

[41] The settlement of the main action involved the plaintiff and both defendants and, specifically, made provision for how the costs of a party would be dealt with if the Offer to Settle was not accepted by October 6, 2025. Given the inclusion of paragraph 13 in the accepted Offer to Settle and given that Ms. Weidhaas is not seeking any contribution and indemnity from Mr. Weidhaas, I will treat this hearing as a motion for costs made by Ms. Weidhaas.

[42] Costs do not form an independent cause of action but, rather, are a discretionary matter to be determined within the context of an action or other proceeding. As Middleton J. in *McLellan v. Powassan Lumber Co.*, [1914] O.J. No. 381, 26 O.W.R. 323 (H.C.), held, at para. 8:

Costs are in truth incident to a determination of the rights of the parties and ought not to be made themselves the subject matter of the litigation. When the merits for any reason cannot be determined, there ought not to be a pretended investigation of the merits for the purpose of awarding costs.

[43] This holding has been accepted and adopted by this court and by the Ontario Court of Appeal: see *Packard v. Fitzgibbon*, 2017 ONSC 566, at para. 34; *Waterloo North Condominium No. 161 v. Redmond*, 2017 ONSC 1304, at para. 31; and *Bondy-Rafael v. Potrebic*, 2019 ONCA 1026, 441 D.L.R. (4th) 658, at para. 43.

[44] In *Simcoe Condominium Corporation No. 12 v. Walker*, 2014 ONSC 4109, the parties had resolved the matter on all issues except costs. Executed minutes of settlement were filed at the opening of the hearing. Counsel then made submissions on the issue of entitlement and quantum of costs. The Applicant, Simcoe Condominium Corporation No. 12, sought its costs on a full indemnity basis in the amount of \$59,057.02. The judge, Howden J., stated that he had reviewed the allegations made in the Corporation’s application as against the respondent and her failure to abide by the Declaration and rules of the Corporation despite requests and warnings. Howden J. also read “the lengthy judgment consented to by her ordering her to restore her unit [...] live within the rules and by-laws and Declaration of the SCC No. 12 for a set period by the end of which she must sell her unit.” The respondent had been warned a number of times that the Corporation would be seeking its costs of the proceeding. Howden J. held that it was clear that “the applicant has succeeded on every issue in this case”. The court also considered that it was the respondent’s conduct which caused the need for litigation and that she “brought this all upon herself”. Ultimately, the court ordered the respondent to pay the sum of \$48,692.09 to the Corporation in costs.

[45] In this case, I am prepared to follow an approach similar to that taken by the court in *Simcoe Condominium Corporation No. 12*. I find that, by his conduct, Mr. Weidhaas caused the need for

this litigation. I am satisfied that it is possible to determine the relative success of the parties without engaging in “a pretended investigation of the merits for the purpose awarding costs”: *McLellan*, at para. 8. And, in turn, I am also satisfied that the costs factors listed in rule 57.01(1) of the *Rules of Civil Procedure* can be applied.

[46] The settlement reached in the main action was based on the position taken by both the plaintiff and Ms. Weidhaas as a defendant, that the plaintiff had some type of a beneficial interest in the Property. Accordingly, given this, I am satisfied that Ms. Weidhaas should be considered successful in the action and crossclaim.

[47] It was Mr. Weidhaas’ position, that the \$100,000.00 received from the plaintiff and her late husband was a gift, that caused the plaintiff to have to commence her statement of claim and Ms. Weidhaas to have to incur the costs of separately defending the action and commencing her crossclaim. While it was open to Mr. Weidhaas to take the position he did throughout the proceeding, there are costs consequences associated with it.

[48] Among other relevant factors I have considered:

- (a) Mr. Weidhaas did not accept the Offer to Settle on or before the stated deadline of October 1, 2025.
- (b) Both defendants needed to accept the Offer to Settle in order to settle the action.
- (c) Ms. Weidhaas was not responsible for prosecuting the main action and did not end up obtaining any judgment as against Mr. Weidhaas.
- (d) Mr. Weidhaas is required to pay costs to the plaintiff in the main action in the amount of \$15,403.44.
- (e) Mr. Weidhaas’ own bills of costs indicates partial indemnity costs incurred in the amount of \$12,987.68.
- (f) There was no offer to settle made to resolve the crossclaim.
- (g) The plaintiff’s Offer to Settle did not refer to the crossclaim.
- (h) Based on the submissions made, both the plaintiff and Ms. Weidhaas were content to resolve the action and the crossclaim for no costs if Mr. Weidhaas had only accepted the plaintiff’s offer by the stated deadline of October 6, 2025.
- (i) Because Mr. Weidhaas did not accept the plaintiff’s offer by its deadline, further costs were incurred by Ms. Weidhaas in having to start preparing for a trial.
- (j) There is no evidence that Ms. Weidhaas is required to pay any costs to her mother respecting the main action.

- (k) I accept the disbursements claimed by Ms. Weidhaas in the amount of \$1,833.42 to be reasonable and necessarily incurred in the circumstances of this case, with the exception of the \$40.00 File Administration Fee and the \$100.00 Litigation Record Charge which are not self-explanatory and for which no explanation was given.

[49] Having regard to all of these factors, and considering the balancing exercise required under rule 57.01 and the guidance provided by the *Boucher* decision of the Ontario Court of Appeal, I am satisfied that awarding costs to Ms. Weidhaas in the amount of \$15,000.00, inclusive of HST and disbursements, is fair, reasonable and proportionate in all of the circumstances.

Disposition

[50] For the foregoing reasons, the court orders that the defendant Carl Heinz Weidhaas pay costs to the defendant Sherri Lynn Weidhaas fixed in the amount of \$15,000.00, all inclusive, payable within 30 days of the release of these reasons.

B. MacNeil J.

MacNEIL J.

Released: March 2, 2025