

CITATION: *Condello v. Moreira*, 2026 ONSC 2158
COURT FILE NO.: CV-22-89142
DATE: 2026/04/10

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Domenico Condello also known as Dominic Condello

Plaintiff

-and-

Roberto Aguiar, Diana Moreira, Harland Tanner, John Piazza, and Piazza Tanner
LLP

Defendants

BEFORE: Justice Sylvia Corthorn

COUNSEL: Christopher A. Moore, Counsel for the Plaintiff

Gary G. Boyd, Counsel for the Defendants, Diana Moreira and Roberto Aguiar

No one appearing for the Defendants, John Piazza Harland Tanner and Piazza
Tanner LLP

HEARD: March 31, 2026 (By videoconference)

COSTS ENDORSEMENT

CORTHORN J.

Introduction

[1] On May 3, 2021, the defendant, Diana Moreira, purchased a multi-unit residential property at 862 Claude Street, Ottawa, from the plaintiff Domenico Condello for \$350,000 (“the 2021 Sale”). Mr. Condello was residing at the property when he and Ms. Moreira entered into an Agreement of Purchase and Sale.

[2] Following the closing of the 2021 Sale, Mr. Condello continued to reside at the property. Mr. Condello occupied the basement apartment until June 1, 2022.

[3] Several events transpired between May 3, 2021 and June 1, 2022. First, renovations were carried out at the property. The renovations were done either by or under the supervision of Ms. Moreira’s partner, the co-defendant, Roberto Aguiar.

[4] Second, in early 2022, Ms. Moreira entered into an Agreement of Purchase and Sale to sell the property, for \$779,800 to an individual who is not a party to the proceeding (“the non-party”). The closing date for that sale was April 28, 2022 (“the 2022 Sale”). In the context of that transaction, Mr. Condello was served with a notice to vacate the basement apartment no later than June 1, 2022.

[5] In 2022, two proceedings were commenced regarding the 2022 Sale. Ms. Moreira commenced an application in which Mr. Condello was the sole respondent. In that proceeding, Ms. Moreira sought relief related to (a) a discharge of the \$300,000 vendor take-back mortgage given by Mr. Condello at the time of the 2021 Sale; and (b) the management, pending resolution of the disputes between the parties, of the net sale proceeds from the 2022 Sale (“the Proceeds”).

[6] Also, in 2022, Mr. Condello commenced an action in which he seeks damages of \$200,000. Mr. Condello’s claims are based in negligent misrepresentation and fraud. Mr. Condello also alleges that the terms of the 2021 Sale were unconscionable; he advances a claim based in unjust enrichment. Mr. Condello alleges that there exists a constructive trust, as a result of which he is entitled to share in the Proceeds.

[7] Over time, Mr. Condello’s action was moved from the regular track to the Simplified Procedure.

[8] The claims against the defendant lawyer and law firm stem from the fact that Ms. Moreira and Mr. Condello were both represented by the same lawyer for the 2021 Sale. Those claims are not relevant for the purpose of this costs endorsement.

Procedural History

[9] In September 2025, the defendants, Ms. Moreira and Mr. Aguiar (“the moving parties”), served a notice of motion for a motion returnable on March 31, 2026. On that motion, now before the court, the moving parties request an order (a) requiring the plaintiff to pay security for costs in the amount of \$50,000; and (b) for the balance of the Proceeds to be paid to Ms. Moreira. On the consent of the parties, the Proceeds have, for several years, been held in the trust account of the moving parties’ lawyers.

[10] In support of the relief requested in their notice of motion, the moving parties say that they rely on the pleadings, an affidavit from Ms. Moreira, and an affidavit from Mr. Aguiar. In the end, the moving parties’ motion record, dated March 16, 2026, does not include the pleadings and does not include an affidavit from Mr. Aguiar.

[11] The moving parties rely exclusively on a five-page, 27-paragraph affidavit sworn by Ms. Moreira in March 2026 (“the Moreira Affidavit”). There are two exhibits to the Moreira Affidavit. The first exhibit is copy of a May 2022 endorsement of Doyle J. on motions heard, together, in Ms. Moreira’s application and in Mr. Condello’s action (“the 2022 Endorsement”). The second exhibit is a copy of an August 2024 endorsement of Ryan Bell J. (“the 2024 Endorsement”). The latter endorsement is exclusively in Mr. Condello’s action.

[12] I pause to highlight that neither endorsement constitutes evidence on the motion. Both endorsements are part of the record in the proceeding. As such, they are properly included in a motion record in the proceeding as individual documents tabbed separately from the affidavit evidence.

[13] Regardless of the manner in which the earlier endorsements are before the court, it is clear that the motion now before the court is at least the fourth motion brought in the proceedings.

[14] The plaintiff’s responding record is dated March 26, 2026. The responding affidavit is from a legal assistant employed by the plaintiff’s counsel (“the Assistant’s Affidavit”).

[15] The Assistant’s Affidavit addresses a motion brought by Ms. Moreira and Mr. Condello, with a return date in August 2022. The relief requested on that motion relates to the disbursement of the Proceeds and \$50,000 in security for costs from the plaintiff. The motion was resolved on consent in April 2023. Pursuant the April 2023 order,

- a) The vendor take-back mortgage from the 2021 transaction was paid in full;
- b) \$150,000 of the Proceeds were to remain in trust; and
- c) The balance of the Proceeds – approximately \$290,000 – was paid to Ms. Moreira.

[16] The April 2023 consent order also addresses the request for the plaintiff to pay \$50,000 in security for costs. That portion of the motion was dismissed, with Ms. Moreira and Mr. Aguiar to pay the plaintiff his costs on the partial indemnity scale, in any event of the cause, in an amount to be agreed upon or assessed.

[17] Last, the consent order provides that the costs of the motion heard by Doyle J. in 2022, the costs of “the adjourned motion”, and the costs of all case conferences to and including February 3, 2022 are to be “determined and assessed by the trial judge. I interpret “determined” to mean the issue of entitlement to costs.

[18] An exhibit to the Assistant’s Affidavit is a copy of a case conference endorsement of Perron A.J. dated March 3, 2025 (“the 2025 Endorsement”). That endorsement is also improperly included as evidence – as opposed to being included in the responding record as a document tabbed separately from the Assistant’s Affidavit.

[19] The 2025 Endorsement provides the court with additional evidence about the procedural history in this action. The purpose of the appearance before Perron A.J. was to “triage the [Moreira/Aguiar] request to bring a summary judgment motion”: at para. 2. Counsel for the parties confirmed to Perron A.J. that, subject to the possible late exchange of experts’ reports, the action is trial ready: at para. 6.

[20] Perron A.J. concluded that Ms. Moreira and Mr. Aguiar were not permitted to proceed with a motion for summary judgment. The order made at the conclusion of the 2025 Endorsement includes the following paragraphs:

1 - The proposed motion for summary judgment is not appropriate for reasons including the following: there are likely significant issues of credibility that will be in dispute, the motion record will be voluminous, it is not proportionate to have another motion in this action given that this is a simplified rule action where numerous motions have already occurred, the action is trial ready and most efficient way to determine all outstanding issues is to proceed to trial in accordance with the summary trial procedure set out in Rule 76.

2 - The pre-trial in this matter is scheduled for April 1, 2025 but the parties have not yet agreed to a proposed trial management plan in accordance with Subrule 76.10(2). The plaintiff has previously circulated a draft trial management plan. The parties were reminded that pursuant to Subrule 76.12(2), the trial of this matter shall not exceed 5 days. Therefore, the parties should aim to streamline the issues and arrive at the most efficient and cost-effective manner of completing the trial within the 5-day maximum.

[21] In summary, the procedural history includes at least four previous motions; representations by all parties to Perron A.J. that, as of approximately one year ago, they are ready to proceed to trial; and, in September 2025, service of the notice of motion for the motion returnable on March 31, 2026.

The Motion is Entirely Lacking in Merit

[22] On the return of the motion, before counsel made any submissions, I reviewed the evidentiary deficiencies in the Moreira Affidavit. The matter was stood down to permit the moving parties an opportunity to consider whether they still wished to proceed with their motion. The moving parties initially informed the court that they would proceed with their request for the balance of the Proceeds to be paid to Ms. Moreira; implicit in that decision is the abandonment of the motion for security for costs.

[23] A lunch break occurred before the matter was reached. On the return from the lunch break, the moving parties informed the court they would no longer be proceeding with the portion of the motion related to payment of the balance of the Proceeds to Ms. Moreira.

[24] In the end, the moving parties abandoned the motion in its entirety.

[25] The evidentiary deficiencies referred to in paragraph 22, above, are relevant to the issue of costs. During submissions on costs, plaintiff's counsel described the motion as "poorly-executed". For the following reasons, I agree with that description.

[26] First, the Moreira Affidavit includes paragraphs in which Ms. Moreira relies on information received from another individual. In paragraphs 20, 23, and 24, Ms. Moreira says either "I was advised by my counsel" or "my counsel advises me". Those paragraphs do not comply with the requirements of r. 39.01(4) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. Ms. Moreira fails to identify, by name, the individual from whom she received the relevant information. Each of those paragraphs is struck as inadmissible.

[27] Paragraphs 23 and 24 include information, which if admitted as evidence, might otherwise be relevant to the issue of security for costs.

[28] With each of those paragraphs struck, the only evidence in support of the quantum requested as security for costs (\$50,000) is the latter portion of paragraph 25 of the Moreira Affidavit. Ms. Moreira therein "request[s] an order that the plaintiff provide security for costs in the amount permitted for costs in a simplified procedure trial - \$50,000."

[29] There is no evidence from Ms. Moreira or from anyone affiliated with or employed by the moving parties' lawyers of record regarding (a) the hourly rate for counsel at trial; (b) an estimate of counsel's time to prepare for trial; (c) an estimate of counsel's time in attending for trial, or (d) an estimate of disbursements to be incurred for trial. Nor is there evidence, in the form of a draft bill of costs, for example, of the moving parties' full indemnity costs to date.

[30] In summary, there is no evidence upon which the court could determine the amount of security for costs payable had the moving parties pursued the motion and been successful.

[31] In his costs submissions, plaintiff's counsel asserted that the admissible evidence does not support a conclusion that, for the purpose of security for costs, the matter falls within the scope of either r. 56.01(1)(c) (costs the plaintiff was previously ordered to pay "remain unpaid") or r. 56.01(1)(e) (good reason to believe the action is frivolous and vexatious and that the plaintiff has insufficient assets in Ontario).

[32] Regarding r. 56.01(1)(c), there is no evidence to support the requisite finding. Regarding r. 56.01(1)(e), the assistant's uncontradicted evidence is that the plaintiff is the owner of the condominium unit, in Ottawa, in which he currently resides. There is no evidence from Ms. Moreira to support a finding of insufficiency of assets.

[33] As noted above, the moving parties did not include copies of the pleadings in the motion record. In paragraph 26 of her affidavit, Ms. Moreira makes the following request: "Given the lack of any direct claim against me for fraud or misrepresentation I would ask the court to order the release to me of the fun[d]s in trust with my lawyer from the sale of the house".

[34] A copy of the statement of claim is included in the responding record. Ms. Moreira fails to mention in her affidavit that the claims against her include claims based on constructive trust arising from a transaction alleged to be unconscionable. In summary, Ms. Moreira, as one of the moving parties, (a) informed the plaintiff and the court that she would include copies of the pleadings in her motion record; (b) failed to do so; and (c) at a minimum, by omission, failed, when providing evidence in support of the motion, to accurately represent the causes of action against her.

[35] The preceding paragraphs do not constitute findings on the merits of the motion for security for costs. They are nothing more than observations, based on the evidentiary record before the court at first glance.

[36] I turn next to the portion of the motion related to the balance of the Proceeds. At paragraph 9 of the grounds, the moving parties assert that "The inability to access her funds has hampered Ms. Moreira in moving forward on her plans to either purchase a massage clinic or to start her own massage clinic." The only evidence in support of that assertion is found in paragraph 14 of the Moreira Affidavit. Ms. Moreira therein says, "It had been my intention to either purchase the massage clinic in which I work as a massage clinic or to open my own clinic. I have been unable to do so because the balance of funds from the sale of my house remains in trust and unavailable to me." The Moreira Affidavit was sworn in March 2026.

[37] The possibility of purchasing or opening a massage clinic was first raised by Ms. Moreira in the materials filed for the purpose of the urgent motions heard by Doyle J. in May 2022. At paragraphs 51 and 52 of the 2022 Endorsement, Doyle J. makes the following observations about Ms. Moreira's stated intention to purchase a message clinic:

[51] Ms. Moreira [...] indicated that she is planning to buy a massage clinic for over \$100,000.

[52] Ms. Moreira has not provided a specific amount of the purchase price nor details of the sale. No documentary or confirmatory evidence has been filed to indicate that this indeed true.

[38] Almost four years have passed since those observations about the quality of the 'massage clinic' evidence was made. If anything, the 'massage clinic' evidence before the court on the motion now before the court is less specific than the evidence on that subject in 2022. In fact, the only additional evidence about the massage clinic is found in the responding record in the Assistant's Affidavit.

[39] An exhibit to the Assistant's Affidavit is a copy of a letter dated June 5, 2022 on the letterhead of Core Elements Registered Massage Therapy. The letter is signed by a Registered Massage Therapist and is addressed "To whom it may concern". The substantive content of the letter is, in its entirety, as follows: "I can attest to Diana Moreira and I having strategic planning conversations within the past 6 months with the interest of her potential purchase/takeover my business Core Elements in the near future" (quoted as it appears in the original).

[40] There is no evidence of specific opportunities to purchase or open a massage clinic at all between May 2022 and March 2026. There is no evidence of the purchase price stipulated for any clinic that Ms. Moreira had a realistic opportunity to purchase. There is no evidence of any opportunity available to Ms. Moreira in 2026 to purchase or open a clinic.

[41] There is no evidence of any financial harm Ms. Moreira will suffer, if the Proceeds remain in trust pending the outcome of the action at trial. While the motion may not have been intended as such, it has the air of a collateral attack on Perron A.J.'s refusal to permit the moving parties to proceed with a motion for summary judgment. If nothing else, the moving parties' decision to bring the motion now before the court in the face of Perron A.J.'s conclusion that "it is not proportionate to have another motion in this action" constitutes disregard of, if not disrespect for, the court's reasons in the 2025 Endorsement.

The Plaintiff is Entitled to Costs of the Motion

[42] The preceding sections of this endorsement address many of the factors listed in r. 57.01(1), including those listed in rr. 57.01(1)(a), (c), (d), (e), and (f).

[43] The parties provided the court with a bill of costs (the plaintiff) and a costs outline (the moving parties). The latter document was the correct type of document: see 57.01(6).

[44] The plaintiff requests and is entitled to costs on the partial indemnity scale in the amount of \$6,623. That amount is equal to approximately 90 percent of the partial indemnity costs set out in the moving parties' costs outline (\$7,246). The moving parties made no submissions on the quantum of costs requested by the plaintiff. I am satisfied that the costs requested by the plaintiff are reasonable.

[45] The moving parties shall pay the plaintiff his costs of the motion, on the partial indemnity scale, fixed in the amount of \$6,623.

[46] I rely on r. 57.03(1)(a) and order that the moving parties pay the costs awarded herein within 30 days of the date of this endorsement.

Order Made

[47] The court makes the following order:

1. The motion by Ms. Moreira and Mr. Aguiar for security for costs and for payment of the balance of the Proceeds is dismissed, as abandoned.
2. The defendants, Ms. Moreira and Mr. Aguiar, shall, within 30 days of the date of this endorsement, pay to the plaintiff his costs of the motion, on the partial indemnity scale, fixed in the amount of \$6,623.

Date: April 10, 2026

Madam Justice Sylvia Corthorn

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

Domenico Condello also known as Dominic Condello

Plaintiff

– and –

Roberto Aguiar, Diana Moreira, Harland Tanner, John
Piazza, and Piazza Tanner LLP

Defendants

COSTS ENDORSEMENT

Madam Justice Sylvia Corthorn

Released: April 10, 2026