

CITATION: Beach v. Zigelstein 2026 ONSC 2317
COURT FILE NO.: CV-15-525111
DATE: April 17, 2026

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Rosemary Beach v. David Zigelstein and Jay Leider and Lloyd Beach;

BEFORE: ASSOCIATE JUSTICE C. WIEBE

COUNSEL: Rosemary Beach, self-represented;
Antonios T. Antoniou for Jay Leider;
Jeffrey Kulka for David Zigelstein;

DECISION: January 29, 2026.

COSTS DECISION

[1] On January 29, 2026 I released my Reasons for Decision dismissing the plaintiff's motion to set aside the Registrar's dismissal order of August 2, 2024. The issue now is costs.

[2] I gave the parties until October 31, 2025 to serve, file and upload costs outlines. Messrs. Leider and Zigelstein served, filed and uploaded bills of costs and written costs submissions for the entire proceeding should they succeed on the motion. Ms. Beach served and filed nothing.

[3] In my Reasons I set a schedule for written costs submissions in light of the result. Mr. Zigelstein filed no further material, obviously relying on his original costs submissions. Mr. Leider served, filed and uploaded further written costs submissions and a further bill of costs for the entire proceeding. Ms. Beach served, filed and uploaded nothing.

[4] As indicated in their written submissions, Messrs. Leider and Zigelstein want their costs of this motion and the entire action. Mr. Leider wants \$36,158.41 in substantial indemnity costs or \$26,516.17 in partial indemnity costs. Mr. Zigelstein relies upon a provision of the mortgage and claims full indemnity costs of \$57,906.29. In the alternative, Mr. Zigelstein claims \$39,227.60 in partial indemnity costs.

Result

[5] Messrs. Leider and Zigelstein were entirely successful on this motion as I dismissed the plaintiff's motion. They deserve costs not only of this motion, but of the entire action. The question is the quantum of the costs award.

Full indemnity costs

[6] Mr. Kulka referred me to paragraph 8 of the Standard Charge Terms 200033 which were a part of the subject mortgage. This paragraph provides that “. . . legal fees (as between solicitor and client) and expenses which may be incurred in . . . proceedings taken in connection with or to realize upon the security given in the Charge . . .” shall be added to the mortgage and paid. I am satisfied that this is a contractual right Ms. Beach agreed to give to Mr Zigelstein to recover full indemnity costs in this entire proceeding.

[7] The courts have generally given effect to such agreements concerning the scope and scale of the costs to be awarded, subject to the court’s general discretion to ensure that the award is fair, reasonable and proportionate; see *7550111 Canada Inc. v. Charles*, 2020 ONCA 505 (C.A.) paras. 3- 4. However, this discretion is narrow. As pointed out by Justice in *Morgan Royal Bank v. Edna Granite & Marble Inc.*, 2014 ONSC 3377 (SCJ) in para. 17, contractual clauses in mortgages “are not a matter for judicial discretion in the way that court ordered costs typically are characterized.”

[8] Given Mr. Zigelstein’s success and these mortgage terms, I will proceed accordingly. It also does not impress me that Ms. Beach made no effort to address the issue of costs, at any time. I have therefore decided to award Mr. Zigelstein his full indemnity costs of this motion and this proceeding.

Conduct

[9] Messrs. Zigelstein and Leider made the point that I should sanction Ms. Beach for her allegations of egregious conduct on their part, such as fraud, dishonesty, criminal conduct and conspiracy. This impugned the integrity and professional reputations of both men. For Mr. Leider in particular this was important as he is a long-standing lawyer. But it was also important to Mr. Zigelstein, a seasoned businessman. This also unduly complicated this action that was essentially a simple mortgage enforcement action.

[10] I agree. Having made these allegations, Ms. Beach chose not to give this case the attention and priority it deserved; indeed, that was essential. She allowed it to be inordinately delayed. She also did not provide proof of these allegations even at this late hour in support of her motion.

[11] The courts have frowned on such behavior and have awarded substantial indemnity costs where there are unsubstantiated allegations of dishonesty, illegality and conspiracy; see *Hordo v. Zweig*, 2021 ONSC 2244 (CanLII) at para. 19. One should not make such allegations and then not pay attention to the case, thereby allowing these allegations proven or disproven in a timely way.

[12] As a result, I have decided to award Mr. Leider substantial indemnity costs of this motion and this proceeding. Again, Ms. Beach’s refusal to address the issue of costs was a factor in this decision as well.

Quantum

[13] The court retains the discretion to determine what award is fair, reasonable and proportionate in the circumstances. The bills of costs of both defendants tracked the hours of the

lawyers and their changing rates over the duration of this action. However, I found both bills of costs somewhat unhelpful as they grouped large numbers of activities without delineating what time was spent on each.

[14] Concerning Mr. Zigelstein, I noticed that his bill showed a substantial amount of legal work done at rates significantly higher than what was paid by Mr. Leider. The work shown in Mr. Zigelstein's bill of costs was not that different in nature from what was shown in Mr. Leider's bill of costs. In addition, the quantum of hours shown in the Zigelstein bill of costs (outside of the Leider motion for judgment) was about the same as or greater than what was shown in the Leider bill of costs. Mr. Leider was the more active of the two defendants.

[15] I, therefore, find that the Zigelstein claim of full indemnity costs in the amount of \$57,906.29 is not fair, reasonable and proportionate in the circumstances. Using the rates and number of hours shown in Mr. Leider's bill as a guide, I have decided that Mr. Zigelstein should be awarded \$50,000 in full indemnity costs for the action and this motion. This is what Ms. Beach could reasonably have expected to pay given the mortgage terms, her conduct and the result.

[16] Concerning Mr. Leider, Rule 1.03 of the *Rules of Civil Procedure* defines substantial indemnity costs as being 1.5 times the applicable partial indemnity costs. Mr. Leider's bill of costs shows his partial indemnity costs as being \$26,516.17. $\$26,516.17 \times 1.5 = \$39,774.25$. This is greater than what he claims, namely \$36,158.41.

[17] The quantum of what Mr. Leider claims in costs is reasonable. The rates for the lawyer's time are quite reasonable. There was a serious effort made to spread the work amongst lawyers, associate lawyers and clerks at lower rates, thereby minimizing cost. The quantum of the hours shown was also reasonable, particularly as Mr. Leider spent time on his motion for summary judgment, a step that triggered the only interlocutory steps that advanced this action.

[18] Again, Leider bill of costs could have been clearer as to the delineation of the hours spent on specific items of work. Therefore, I have decided to apply a minor deduction. I award Mr. Leider substantial indemnity costs of \$35,000 for the costs of this motion and the action. This is what Ms. Beach could reasonably have expected to pay given her conduct and the result.

Conclusion

[19] In conclusion, I award Mr. Zigelstein full indemnity costs for this motion and the action in the amount of **\$50,000**. I award Mr. Leider substantial indemnity costs for this motion and the action in the amount of **\$35,000**.

[20] I have decided to give Ms. Beach more time to pay these awards. Both awards of costs must be paid by Ms. Beach on or before **sixty (60) days** from the date of this order.

DATE: April 17, 2026

ASSOCIATE JUSTICE C. WIEBE