

**CITATION:** Nayer v. Wang, 2024 ONSC 1065  
**COURT FILE NO.:** CV-19-615606  
**DATE:** 20240220

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:** )  
 )  
JAMSHID NAYYER ) *Joel E. Levitt, for the Plaintiff*  
 )  
Plaintiff )  
 )  
– and – )  
 ) *David M. Goodman, for the Defendants*  
DANPING WANG also known as LINDA )  
WANG and SHI GANG NI also known as )  
SIMON NI )  
 )  
Defendants )  
 )  
 )  
 )  
 )  
 ) **IN WRITING**

2024 ONSC 1065 (CanLII)

**PAPAGEORGIU J.**

**COSTS ENDORSEMENT**

**Overview**

[1] By reasons dated January 5, 2024, I awarded the plaintiff Jamshid Nayer damages in the amount of \$555,000 as against the defendant Linda Wang. She had taken large sums from Mr. Nayer, agreed that he would have an interest in various homes, used his money to purchase such homes, and then ultimately refused to abide by their agreement whereby he had an interest.

[2] Mr. Nayer seeks costs against Ms. Wang.

[3] I dismissed the action against Simon Ni. He seeks costs of this proceeding as against Mr. Nayer.

**Decision**

[4] For the reasons that follow, I award Mr. Nayer costs as against Ms. Wang. I also award costs in favour of Mr. Simon, also as against Ms. Wang.

## Issues

- Issue 1: Mr. Nayyer's claim against Ms. Wang--What is the scale of costs and the appropriate costs award?
- Issue 2: Is Mr. Ni entitled to costs as against Mr. Nayyer?
- Issue 3: When does prejudgment interest begin to run?

## Analysis

### Issue 1: Mr. Nayyer's claim against Ms. Wang--What is the scale of costs and the appropriate costs award?

[5] Mr. Nayyer was the successful party and presumptively entitled to costs.

[6] He claims substantial indemnity costs for the period from the date he made an offer to settle, October 18, 2023, in the amount of \$280,000. This was significantly below the outcome of this proceeding. Pursuant to r. 49, he is entitled to partial indemnity costs up until the date of the offer and substantial indemnity costs afterward.

[7] His substantial indemnity costs after the offer were \$58,731.30. For the period prior to the offer to settle he claims \$61,389.21 on a partial indemnity basis.

[8] Pursuant to s. 131(1) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, costs are in the discretion of the court. Rule 57 sets out the factors which courts should have regard to when awarding costs and which I have 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": *Zesta Engineering Ltd. v. Cloutier* (2002), 21 C.C.E.L. (3d) 161 (Ont. C.A.), at para. 4; *Boucher v. Public Accountants Council for the Province of Ontario* (2004), 71 O.R. (3d) 291 (C.A.), at para. 26; *Clarington (Municipality) v. Blue Circle Canada Inc.*, 2009 ONCA 722, 100 O.R. (3d) 66, at para. 52; and *G.C. v. Ontario (Attorney General)*, 2014 ONSC 1191, at para. 5.

[9] Linda says that the amount of time spent by Mr. Nayyer to prosecute this matter was unreasonable and not within her reasonable contemplation. She asserts that an appropriate total award is \$70,000. However, she did not provide her own Bill of Costs so this court could assess whether the costs spent by Mr. Nayyer were within her reasonable contemplation.

[10] I have reviewed Mr. Nayyer's comprehensive Bill of Costs and detail. The time spent on this matter was reasonable given the importance to Mr. Nayyer, whose life savings had been taken by Ms. Wang. The record was voluminous, including banking records that totaled 1,300 pages. I have reviewed the rates which are reasonable, as well as the time spent which is reasonable. The

matter was complex because it required the review of extensive documents to address the convoluted arguments, made in concert by three witnesses. Although not credible, the allegations they made required significant analysis.

[11] I am satisfied that both amounts claimed by Mr. Nayyer, (the substantial and partial indemnity costs) were in the reasonable contemplation of Ms. Wang and proportionate and appropriate to the scope of the issues in dispute.

[12] I award him his full partial indemnity costs up until the date of the Judgment and full partial indemnity costs for the period afterwards. Inclusive of disbursements and HST this is \$128,627.17.

**Issue 2: Is Mr. Ni entitled to costs as against Mr. Nayyer?**

[13] I reject Mr. Ni's argument that he is entitled to any costs against Mr. Nayyer, but I will award Mr. Ni costs as against Ms. Wang for the following reasons:

- Mr. Ni and Ms. Wang had the same lawyer; Mr. Ni would have had to participate in this proceeding in any event and the same overall costs would have been incurred perhaps with the exception of his examination for discovery.
- Even though the action was dismissed as against Mr. Ni, he has still benefitted from substantial sums she took from Mr. Nayyer. This money was used to purchase homes jointly by Ms. Wang and Mr. Ni. Although I did not find that the causes of action asserted against Mr. Ni were proven, he was at least willfully blind to the significant sums that Ms. Wang was taking from Mr. Nayyer, and that ended up being used for Mr. Ni's and Ms. Wang's home. This should have raised questions in his mind as to what was going on if he did not know.
- It would be unjust to award Mr. Ni costs against Mr. Nayyer when he has already benefitted from money unlawfully taken by Ms. Wang.
- Although it was unclear to me whether he knew what Ms. Wang was doing at the material time, he still testified in support of Ms. Wang's preposterous allegations, which had clearly been made up after the fact to explain the significant funds she received, and which made no sense. Therefore, he still attended in court and supported this dishonest evidence.
- Mr. Ni also came to court with unclean hands. I found that he and Ms. Wang did not properly report their taxes to the CRA. In *Mocanu v. Mocanu*, 2023 ONSC 7098 (CanLII) at para 13, the Court took this into account in denying costs to a successful party.
- In *Wilson v. McNeil*, 2023 ONSC 4000 at paras 17-23, the Court held that it was appropriate to grant "a Sanderson or Bullock order." In this case it was reasonable to join Mr. Ni. Here Ms. Wang, the unsuccessful defendant, caused Mr. Ni to be added as a party. The causes of action were the same and it was Ms. Wang's actions that caused Mr. Ni to be added.

- Mr. Ni submitted that he should be entitled to his costs in the amount of \$2,600 plus HST. I am making this order as against Ms. Wang.

### **Issue 3: When does prejudgment interest begin to run?**

[14] I reject the argument that interest runs from the date when Ms. Wang sold the property in question, on April 18, 2019, because that is not when the cause of action arose.

[15] The cause of action arose on October 28, 2018, when Ms. Wang met with Mr. Nayyer and refused his request to transfer the property in question to him. This was an anticipatory breach of their agreement. It was also the time when the unjust enrichment arose.

[16] The fact that she proceeded to sell the property in the face of his claim, to avoid Mr. Nayyer's claim, is not a reason to benefit her with a lower interest rate. Had she not sold this property, Mr. Nayyer could have obtained a certificate of pending litigation, and his claim would have been completely secure. Because of her actions, it is not.

[17] As such I award prejudgment interest at the rate of 2 percent pursuant to section 128(1) of the *Courts of Justice Act* from October 28, 2018.

[18] As a final matter, I wish to commend Mr. Nayyer's counsel for his significant contribution to access to justice in Ontario. He was able to provide excellent representation in this difficult case without expending significant resources. The Joint book of documents he prepared made the complex issues easy to follow because of the way it was organized, by type of document, and then chronologically within each section. He represented an elderly man whose life savings had been taken and who likely had no money to pay him while the action was proceeding. And he did so for what can only be considered a reasonable amount of legal fees. This is an example of the finest tradition in the legal profession of people stepping up and assisting vulnerable people who have been harmed. Bravo!!

### **Conclusion**

[19] The total costs award is thus:

- \$128,627.17 inclusive of disbursements and HST in favour of Mr. Nayyer to be paid by Ms. Wang.
- \$2,938 inclusive of HST in favour of Mr. Ni to be paid by Ms. Wang.

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Papageorgiou J.

