CITATION: Melo et al v. Hiebert et al, 2024 ONSC 1703
COURT FILE NO.: CV-20-48-00
DATE: 2024 03 26

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: CARLOS MELO and ANDREAI MELO, Plaintiffs

AND:

CORNELIUS HEIBERT and EVA HIEBERT, Defendants

BEFORE: LeMay J.

COUNSEL: James Battin, for the Plaintiffs

Manny Sohal, for the Defendants

ENDORSEMENT RE COSTS

[1] This was a dispute over whether the property that the Plaintiffs purchased from the Defendants was supposed to come with a retaining wall, as well as whether other deficiencies in the property were the responsibility of the Defendants. In a decision released on January 19th, 2024 (2024 ONSC 223), I found that most, but not all, of the Plaintiff's claims should be granted. It is now time to fix the costs for the trial.

Positions of the Parties

[2] The Plaintiffs assert that they should have their costs in full. Their costs outline seeks total costs recovery of $24,299.24 inclusive of HST and

disbursements. The Plaintiffs argue that they should be entitled to their costs in full because their offer to settle was closer to what the Court ordered than the Defendants' Offer to Settle and because they were relatively successful at trial.

[3] The Defendants, on the other hand, argue that each side should bear their own costs. The Defendants argue that they made significant concessions to make sure that the trial functioned more smoothly and that they made a reasonable offer that would have resulted in the additional amounts coming within the jurisdiction of the Small Claims Court.

Analysis and Disposition

[4] There is no argument by either party that their offers to settle have triggered *Rule 49 of the Rules of Civil Procedure*. The Plaintiffs' offer was for the payment to them of an all-inclusive sum of $68,000.00 inclusive of costs and interest, while the Defendants offered to settle the action for the payment of the all-inclusive sum of $30,000.00.

[5] Neither offer is clearly a Rule 49 offer, and the ultimate judgment (exclusive of costs) was clearly higher than the Defendants' offer and modestly lower than the Plaintiffs' offer. To the extent that the offers favour one side, the Plaintiffs' offers were more reasonable. However, these offers do not dispose of the issue of costs.

[6] Therefore, Rule 57.01 sets out the principles that I am to apply in fixing the costs for this proceeding. In that respect, the most important factors are as follows:

a) Who was the successful party?

b) How complicated was the proceeding?

c) Was there conduct of either party that tended to shorten or lengthen the proceeding?

d) What were the reasonable expectations of the losing party?

[7] I start with who the successful party was. The Plaintiffs obtained most, but not all, of what they sought. As a result, they are the more successful party and should be entitled to recover the costs of this proceeding. I note that the Defendants' claim that this action might have ended up within the jurisdiction of the Small Claims Court is not sustainable. The fact is that the amounts that the Defendants have been ordered to pay are clearly beyond the jurisdiction of the Small Claims Court. The action was properly a Superior Court action, and there is no basis to reduce the costs because it is close to the Small Claims Court limits.

[8] This brings me to how complicated the proceeding was. This was a relatively straightforward matter. It had some complexities in terms of the interaction between the Tarion warranty, the claims of the Plaintiffs and the various issues. However, the evidence itself was straightforward. This is a factor that

supports a lower assessment of costs, but that lower assessment must be tempered by the fact that expert evidence was required to dispose of the issue of the retaining wall.

[9] The third factor is the Counsel for the Defendants is correct that the work done between the time I held the Case Conference and the trial ensured that this trial proceeded efficiently. It took place over three days rather than the five that had originally been budgeted However, this is a factor that supports a reduction in the amount of costs that the successful party should receive.

[10] This brings me to the final factor that is most relevant in this case, which is the reasonable expectations of the parties. I had the parties file their bills of costs before my decision was released. The Defendant's claim for costs if they had been successful would have been $21,469.87 inclusive of HST and disbursements. Those costs are similar to the costs that the Plaintiff would have sought. This is a factor that supports the award of costs that the Plaintiff is seeking.

[11] When I step back and consider all of these factors together, I am of the view that there should be a modest reduction in costs to take into account the fact that the Plaintiffs were not entirely successful, but that the rest of the factors described above suggests that the Plaintiffs' claim for costs is reasonable. The disbursements are also entirely reasonable for a case of this nature. As a result,

the Defendants shall pay the Plaintiffs the sum of $20,000.00 inclusive of HST and disbursements on account of costs.

Conclusion and Order

[12] For the foregoing reasons, I order as follows:

a) The Defendants shall pay to the Plaintiffs the sum of $20,000.00 inclusive of HST and disbursements on account of the costs of this action.

b) The Defendants are jointly and severally liable for the payment of those costs.

c) The costs shall be paid within thirty (30) calendar days of the release of this endorsement.

_____

LeMay J.

DATE: March 26, 2024

CITATION: Melo et al v. Hiebert et al, 2024 ONSC 1703
COURT FILE NO.: CV-20-48-00
DATE: 2024 03 25

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: CARLOS MELO and ANDREAI MELO

AND:

CORNELIUS HIEBERT and EVA HIEBERT

BEFORE: LeMay J.

COUNSEL: James Battin, for the Plaintiff

Manny Sohal, for the Defendants

ENDORSEMENT RE COSTS

LeMay J.

DATE: March 26, 2024