

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**BETWEEN:** )  
 )  
Joel Donen ) David Levangie and Teodora Obradovic,  
Plaintiff/Responding Party ) Counsel for the Plaintiff/Responding Party  
 )  
**AND** )  
 )  
CleanDesign Income Corp., CleanDesign ) Jeremy Devereux and Tiffany O’Hearn  
Power Systems Inc., Precision Drilling ) Davies, Counsel for the Defendants/Moving  
Corporation, Mark Lerohl and Shuja Goraya ) Parties, CleanDesign Income Corp.,  
 ) CleanDesign Power Systems Inc., and Mark  
 ) Lerohl  
Defendants )  
 )  
 ) **HEARD in writing, July 26, 2024**

**LEIPER J.**

**COSTS ENDORSEMENT**

[1] Three of the named Defendants in this action, CleanDesign Power Systems Inc. (“Clean Power”), CleanDesign Income Corp., (“Clean Income”) and Mark Lerohl, the defendants, brought a motion to remove Fogler Rubinoff, counsel to the plaintiff, Joel Donen, from the record based on a conflict of interest linked to the firm’s former representation of Clean Power and Clean Income.

[2] For reasons released on July 3, 2024, I granted the motion to remove counsel to the plaintiff from the record. The parties made written submissions on costs.

[3] The plaintiff submits that the parties should bear their own costs, despite the defendants’ success on the motion. The plaintiff submits that the defendants succeeded on narrow grounds, in circumstances where there was conflicting caselaw. The plaintiff also submits that the defendants added to the complexity of the motion by requiring four cross-examinations, submitting a 1,500 page record and spending approximately 1/3 more in fees than the plaintiff whose interest in choosing his counsel was being threatened by the motion to remove Fogler Rubinoff.

[4] The defendants respond that as a matter of first principle, they are entitled to their costs as the successful parties. They acknowledge that their bill of costs is higher than the plaintiff's but submit this is due to the of seniority of counsel, and not the hours spent on the motion, which are roughly the same for each side.

[5] Costs principles are well established in Ontario. The court should strive to fix a fair amount for the unsuccessful party to pay in a particular proceeding. Rule 57.01 guides the court with the factors in the assessment of costs which include the principle of indemnity, the reasonable expectations of the parties, the complexity of the proceeding, the importance of the issues, the conduct of the parties, and whether a party denied anything that they ought to have admitted.

[6] I find that the principle of indemnity applies to this motion. It does not matter which of the elements ground success, unless disproportionate time is taken by advancing "faint hope" positions. That is not the case here. The principle of indemnity favours the defendants on the motion.

[7] The amount of time expended by the parties, the volume of material and the assignment of two lawyers per side to the motion all speak to the importance of the issue to the parties. I would describe this as a moderately complex matter given that there was law directly on point and the background was not factually complex.

[8] Considering the costs principles, the parties' submissions and the decision on the motion, I find that a fair and reasonable cost award, given the time spent by all parties, is \$70,000.

[9] I order that the plaintiff pay the costs of the defendants in the amount of \$70,000 all inclusive.

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Leiper, J.

**Date: July 26, 2024**

**CITATION:** Donen v. CleanDesign Income Corp., 2024 ONSC 4209  
**COURT FILE NO.:** CV-24-00714669-0000  
**DATE:** 2024/07/26

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

Joel Donen

**AND**

CleanDesign Income Corp., CleanDesign Power  
Systems Inc., Precision Drilling Corporation, Mark  
Lerohl and Shuja Goraya

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**COSTS ENDORSEMENT**

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Leiper J.

**Released: July 26, 2024**