

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
) *Sean N. Zeitz and Cora Madden, Lawyers*
 JODI L. FELDMAN PROFESSIONAL) for the Plaintiff
 CORPORATION)
)
 Plaintiff)
)
 – and –)
)
) *Michael B. Miller, Lawyers for the*
 LYNNE CATHERINE FOULIDIS) Defendant
)
 Defendant)
)
) **HEARD:** In writing
)
)
)

G. DOW, J.

REASONS FOR DECISION ON COSTS

[1] The plaintiff’s claim for payment of legal services provided to the defendant proceeded to trial from January 15 through 22, 2024. My reasons, released April 24, 2024 (2024 ONSC 552) found in favour of the plaintiff and assessed the value of the legal services provided to the defendant to be in the amount of \$480,919.93 inclusive of fees, HST and disbursements.

[2] I urged the parties to agree on costs. If they were unable to do so, I provided a deadline for the service of limited written submissions. I received those submissions on May 24, 2024.

[3] The successful plaintiff sought \$276,631.63, all inclusive based on partial indemnity costs to a February 9, 2023 Offer to Settle and substantial indemnity costs thereafter, plus disbursements. Also included was \$5,000 plus HST for preparation of their written submissions regarding costs.

[4] There were also interlocutory orders for costs including one by Justice Shore on September 24, 2021 regarding a charging order where the costs were reserved to the trial judge.

[5] The February 9, 2023 Offer to Settle was for the defendant to pay \$375,000, all inclusive with provision for terms adding the \$30,000 costs award made by Justice Diamond January 16, 2019 as well as interest (at the applicable rate to be applied as of the date of acceptance). It is clear the trial result has attracted application of Rule 49.10.

[6] I required each side to provide their draft Bill of Costs at the conclusion of the trial setting out the amount they sought in the event they were successful. The plaintiff's Bill of Costs ranged from \$223,711.75 for partial indemnity fees to \$283,595.53 for substantial indemnity fees. The plaintiff's disbursements totalled \$14,118.50 of which only the invoice from Teplitsky LLP in the amount of \$1957.50 was disputed by the defendant on the basis its purpose was not provided. This compared to the defendant seeking \$166,331.80 for partial indemnity fees rising to \$222,639.57 at substantial indemnity rates.

[7] The defendant objects to the award sought by the plaintiff on the following basis:

- a) it exceeds the principles of reasonableness, fairness and proportionality;
- b) the dockets provided were insufficiently detailed;
- c) the parties agreed to proceed on the basis of a summary trial as if under Rule 76 with evidence in chief submitted by affidavit and where costs are limited to \$50,000 for fees under Rule 76.12.1; and
- d) various time docketed amounts were excessive and/or ought not to be allowed.

[8] I agree with the first two submissions of the defendant. I disagree with the third submission given the Statement of Claim was neither issued nor amended to fall within under Rule 76.

[9] In the plaintiff's submissions, there was reliance upon and reference was made to comments in *Persampieri v. Hobbs*, 2018 ONSC 368 at paragraphs 76 to 92 which included that proportionality should not result in a successful party being under compensated for its costs. That decision dealt with a motor vehicle personal injury claim, that is, a very different situation than the one before me. Despite such a distinguishing factor, that principle is sound.

[10] Regarding the claim for greater details within the time dockets, I was not advised of any request made by the defendant for same or a refusal to provide same. As a result, this submission is seriously undermined, both with regard to the time dockets and the disbursement in dispute.

[11] Regarding the reduction to the \$4,000 claimed in drafting and revising the Statement of Claim, this has merit as the initial drafting of the Statement of Claim was done while the defendant was still a client of the plaintiff (although not included in the substantive claim). I agree with the defendant that some reduction should be made given the defendant should not be fully responsible for insufficient or inadequate drafting of pleadings.

[12] Regarding the time expended with respect to the motion for the charging order determined by Justice Shore, the plaintiff's dockets total \$32,107.50 at full indemnity rates. This could be reduced to \$22,475.25 at (70%) partial indemnity rates. This motion preceded the Offer to Settle described above. The defendant's submissions of it being reduced to \$10,000 is undermined by their failure to demonstrate what time and legal expense they incurred. I find the partial indemnity rate of \$22,475.25 to be excessive for the relief sought and obtained. I would fix partial indemnity costs same at \$15,000 as part of reaching the all inclusive figure set out below.

[13] Regarding the \$16,980 claimed at full indemnity rates for the mediation, I agree with the defendant that this is excessive and repeat that this submission is undermined by the absence of what expense was incurred by the defendant. Further, the exact time frame was not established by either side with respect to whether it was before or after the February 9, 2023 Offer to Settle.

[14] To that end, a reduction, which I would fix to be in excess of \$5,000 is required.

[15] Regarding the \$48,567.50 for what appears to be time expended in the litigation before trial preparation began, this amount appears to be similar to that expended by the defendant and need not be substantially reduced.

[16] Regarding the trial preparation and trial attendance claims, it would appear that the time claimed exceeded that of the defendant. While some of that time may be explained by the experience level of counsel involved (the defence counsel being a 1974 call while plaintiff's counsel was 2005 call) that is, the more experienced counsel may be able to complete the task more efficiently, this should be balanced and is undermined by the modest difference in hourly rates (\$700 v \$625). Further, one would expect a barrister with almost twenty years experience to be efficient. I would also note presenting the case as plaintiff, with the onus to prove that case generally takes more time than defending that same case.

[17] Overall, and mindful of the need for reasonableness and proportionality, the need to include an amount for the matter heard by Justice Shore September 24, 2021, the factors listed under Rules 57.01 and acceptance of the submissions of the plaintiff's entitlement to partial indemnity costs to February 9, 2023 and substantial indemnity costs thereafter, I fix the plaintiff's costs to be \$200,000 for both partial and substantial indemnity fees, plus HST of \$26,000 and disbursements as claimed in the amount of \$14,118.50 for a total of **\$240,118.50**, all inclusive.

Mr. Justice G. Dow

Released: August 1, 2024

CITATION: Jodi L. Feldman Professional Corporation v. Foulidis, 2024 ONSC 3598
COURT FILE NO.: CV-18-592247
DATE: 20240801

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SUPERIOR COURT OF JUSTICE

BETWEEN:

JODI L. FELDMAN PROFESSIONAL
CORPORATION

Plaintiff

– and –

LYNNE CATHERINE FOULIDIS

Defendants

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