

**CITATION:** HSBC Bank Canada v. Guido, 2025 ONSC 869  
**COURT FILE NO.:** CV-19-00612709-0000  
**DATE:** 20250207

**ONTARIO**

**SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)**

<b>BETWEEN:</b>	)	
	)	
HSBC BANK CANADA	)	<i>Deborah Palter &amp; Jessica DeFilippis</i> , for the
Plaintiff/Defendant by Counterclaim	)	Plaintiff/Defendant by Counterclaim, HSBC
	)	Bank Canada
<b>– and –</b>	)	
	)	
ANTONIO GUIDO, also known as	)	<i>Rory McGovern</i> , for the Defendant/Plaintiff
ANTHONY GUIDO	)	by Counterclaim, Antonio Guido also known
Defendant/Plaintiff by Counterclaim	)	as Anthony Guido
	)	
<b>– and –</b>	)	
	)	
HSBC BANK CANADA, MICHAEL	)	
THOMAS & ASSOCIATES LTD.,	)	
BRUNO CAMPOLI and JOHN DOE 1-X	)	
Defendants to the Counterclaim	)	
	)	
	)	<b>HEARD:</b> August 8, 2024 – Written Cost
	)	Submissions dated December 13, 2024,
	)	January 24, 2025 and January 30, 2025

**KIMMEL J.**

**COSTS ENDORSEMENT: PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

**The Summary Judgment Decision**

[1] The court granted summary judgment against Antonio Guido, also known as Anthony Guido ("Guido"), for amounts owing under the terms of the unlimited demand guarantee he provided in support of the debt owed by his company, RCB, to HSBC Bank Canada ("HSBC", or the "Bank" or the plaintiff) totaling \$2,039,042.84 as of the original demand for payment on October 26, 2018, plus interest thereafter. The court also granted summary judgment dismissing the \$11 million counterclaim by Guido against the Bank: see *HSBC Bank Canada v. Guido*, 2024 ONSC 5750 (the "Summary Judgment Decision").

[2] Capitalized terms not otherwise defined in this costs endorsement shall have the meanings ascribed to them in the Summary Judgment Decision.

[3] The court found that there was no issue requiring a trial of the Bank's claim on the Guarantee, nor in respect of Guido's defences and counterclaims. The loan advances and defaults were not seriously contested, nor was the validity of the loan Guarantee. The Bank was able to largely rely upon undisputed facts to support the judgment that it sought against Guido. The outcome of the motion largely turned on whether Guido's defence and counterclaim raised a genuine issue for trial. Guido raised many controversial and disputed allegations in support of his various defences and counterclaims. These allegations took up a lot of the prehearing and hearing time.

[4] In his defence and in his counterclaim, Guido asserted claims against the Bank for breach of contract, breach of the duty of good faith in contractual performance, negligent misrepresentation, conspiracy, unjust enrichment and unconscionability. Guido's defences and counterclaims were predicated upon the assertion that intermediaries who he had retained (the other defendants to the counterclaim, MTA and Campoli) were also acting as agents of HSBC. Guido alleged that Campoli and MTA made misrepresentations to him that were binding on the Bank (because of the claim that they were HSBC's agents) and that they conspired with HSBC executives to extract unlawful fees from him in exchange for promises of leniency and forbearance.

[5] After five years of litigation, the exchange of affidavits of documents, cross-examinations of the Bank and Guido and a Rule 39.03 examination of Campoli, the Court concluded in its October 17, 2024 Summary Judgment Decision that there was no evidence to corroborate Guido's assertions against the Bank. There was no evidence that Campoli was acting as an agent for and/or conspiring with HSBC executives to mislead and induce Guido into a false sense of security that his Guarantee (and the loan to his company) would not be enforced. Nor was there any evidence to corroborate Guido's theory that any HSBC employees received payments in furtherance of this alleged scheme.

[6] The court found the assertions in the Amended Defence and Counterclaim regarding the Bank's conduct and failure to act in good faith in its enforcement of the Guarantee to be wholly unsubstantiated in law and fact.

[7] The court found that there was no direct or inferential evidentiary foundation for a finding of any agency relationship between Campoli/MTA and the Bank, and no genuine issue requiring a trial of the Agency Assertion. The court found the Alleged Conspiracy (and the claims of unconscionability and unjust enrichment found to be part of the Alleged Conspiracy) to be entirely based upon speculation, inuendo and the prospect that something might be uncovered at trial.

### **Costs Entitlement and Process for Determination Scale and Quantum of Costs**

[8] In light of the outcome of the motion, the court ruled in the Summary Judgment Decision that the Bank was entitled to its costs of the action, including the summary judgment motion. The court recognized that, absent agreement of the parties on the quantum and scale of costs, the costs would have to be determined by the court with regard to the Rule 57 factors and any Rule 49 (or other) offers that may have been exchanged between the parties.

[9] The parties were not able to reach an agreement on the scale and quantum of costs to be paid by Guido to the Bank. They advised the court of such and asked to be permitted to make brief written submissions on costs (their costs outlines having been exchanged amongst themselves prior to the release of the Summary Judgment Decision). Pursuant to the court's direction, the court has received the Bank's written costs submissions dated December 13, 2024, Guido's responding costs submissions dated January 24, 2025 and the Bank's reply costs submissions dated January 30, 2025. This costs decision has considered and takes into account for the parties' written costs submissions and their bills of costs, in addition to the relevant portions of the Summary Judgment Decision.

### **Brief Overview of the Parties' Positions**

#### *Overview of the Plaintiff's Position on Costs*

[10] The Bank's Bill of Costs indicates actual fees of \$422,332.81 (inclusive of HST), corresponding with roughly 600 hours of work by various legal professionals at differing hourly rates, and total disbursements of \$4,896.67.

[11] The plaintiff seeks an award of its substantial indemnity costs of the action (including the summary judgment motion) in the amount of \$380,589.19 (inclusive of HST and disbursements of \$4,896.67). The Bank claims to be contractually entitled to substantial indemnity costs under the terms of the Guarantee, and also asserts that this higher scale of costs is warranted because of Guido's unproven allegations of serious misconduct on the part of Bank executives and Guido's litigation conduct, specifically his attempts to delay the summary judgment motion.

[12] Alternatively, the plaintiff seeks costs scaled between partial indemnity and substantial indemnity (relative to the periods before and after an offer to settle that the Bank made and beat, even though that offer did not meet the formal requirements of Rule 49 because it expired before the hearing of the summary judgment motion). The scaled costs that the Bank seeks are \$341,120.77 (inclusive of HST and disbursements of \$4,896.67).

[13] The Bank maintains that it was entitled to retain a law firm of its choosing and should not be limited in its costs recovery by the fact that Guido selected a firm that had fewer legal personnel involved in the file, spent fewer hours working on the file and charged lower hourly rates. The Bank points out that there were prior Costs Outlines submitted and awards of costs made in the proceeding from which Guido was fully aware of the difference in the hourly rates of the parties' respective lawyers. Accordingly, the Bank says it should come as no surprise to him that the amount of costs charged to and claimed by the Bank is higher than the amounts corresponding with the work done by Guido's counsel.

#### *Overview of Guido's Position on Costs*

[14] Guido contends that the Bank should only be awarded costs on a partial indemnity scale. He maintains that the nature of the allegations he made and his litigation conduct do not warrant a

higher scale of costs. He characterizes this as a straightforward summary judgment motion for judgment on his Guarantee.

[15] Guido further contends that the amount of partial indemnity costs claimed by the Bank is not proportionate and that it was not within his reasonable contemplation that he would be faced with a costs award of even the amount of partial indemnity costs that the Bank claims. Guido does not dispute the claimed disbursements, but submits that a more appropriate award would be for partial indemnity costs of \$53,724.72 (inclusive of HST), aligned with the partial indemnity costs that are indicated in his lawyer's Bill of Costs.

[16] Guido does not address the contractual claim to substantial indemnity costs, but argues that substantial indemnity costs are not mandated by Rule 49 since the Bank's offer was not a Rule 49 compliant offer open until after the hearing commenced. Alternatively, if substantial indemnity costs are awarded, he submits the amount should correspond with the substantial indemnity costs he claimed, of \$80,587.08 (inclusive of HST).

[17] The cost amounts indicated in Guido's Bill of Costs correspond with approximately 226 hours worked primarily by the one lawyer who represented him. He says that the over 600 hours of legal professional time docketed by the Bank's lawyers is disproportionate and not within his reasonable contemplation.

### **Analysis**

[18] Under s. 131 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, the costs of a proceeding are discretionary. The factors to be considered by the Court in connection with an award of costs are set out in Rule 57.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 (the "Rules"). The court's use of its discretion and the application of Rule 57.01 are guided by the principles of fairness and reasonableness. These principles have guided the exercise of the court's discretion since they were articulated by the Court of Appeal for Ontario at paragraph 24 of *Boucher v. Public Accountants Council (Ontario)* (2004), 71 OR (3d) 291 (C.A.), and are now embodied in subrules 57.01 (0.a) and (0.b):

- a. (0.a) the principle of indemnity, including, where applicable, the experience of the lawyer for the party entitled to the costs as well as the rates charged and the hours spent by that lawyer;
- b. (0.b) the amount of costs that an unsuccessful party could reasonably expect to pay in relation to the step in the proceeding for which costs are being fixed.

[19] Other relevant Rule 57.01 factors in this case include:

- (a) the amount claimed and the amount recovered in the proceeding (\$2 million under the Guarantee and \$11 million in the counterclaim);

- (b) the complexity of the proceeding (due to the issues raised in the defence and counterclaim);
- (c) the importance of the issues (allegations of wilful misconduct);
- (d) the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the Proceeding (repeated adjournment requests and last minute motions by Guido);
- (e) a party's denial of or refusal to admit anything that should have been admitted;
- (f) any other matter relevant to the question of costs.

[20] I agree with the plaintiff that Guido's cost submissions do not adequately take into account the significance of the assertions he made in his defence and counterclaim that the court determined were unfounded and without any evidentiary support (as summarized earlier in this endorsement). Guido made serious allegations of willful misconduct by Bank executives that the Bank had to respond to. These allegations added a layer of complexity to what would have otherwise been a straightforward claim under the Guarantee. The counterclaim sought significantly more than what the Bank was claiming, upping the ante both in terms of the amount in issue, and the complexity and importance of the issues.

[21] In the Summary Judgment Decision, the Court recorded Guido's history of requesting adjournments of the motion since it had originally been served on January 24, 2020, including a request for an adjournment that was made at the outset of the hearing of the summary judgment motion that was denied. It was also noted that was Guido's third adjournment request in a matter of months, and followed two recent endorsements reiterating that the hearing date was peremptory to Guido. The Bank prepared a detailed chronology for the motion documenting the many deadlines in the timetable for this motion that were missed by Guido along the way. The court noted in the Summary Judgment Decision that Guido's attempts to delay or avoid the summary judgment motion were well documented.

[22] At a case conference held on July 8, 2024, the court observed that "[t]he record shows that this court has already extended significant accommodations to Mr. Guido (there have been a number of timetables previously ordered on consent, and Mr. Guido has repeatedly failed to comply with agreed deadlines)." The court commented that "the procedural "bobbing and weaving" on the part of Mr. Guido, apparently with a view to avoiding or substantially delaying HSBC's pending summary judgment motion" could not continue.

[23] In terms of other relevant considerations, the plaintiff's offer (even if not technically a Rule 49 offer with the mandatory cost consequences) is a relevant consideration but not one that leads me to determine that substantial indemnity costs should be awarded. However, the contractual requirement under the Guarantee that the guarantor (Guido) pay the Bank's substantial indemnity

costs incurred in the enforcement of the Guarantee is an important consideration in the exercise of the court's discretion in determining the appropriate scale of costs to be awarded: see *Bossé v. Mastercraft Group Inc.*, 123 DLR (4th) 161 (Ont. C.A.), at p. 178; *Business Development Bank v. Oplynx Inc.*, 2023 ONSC 5706, at paras. 31-32; and *Zubrzycki v. Koper*, 2012 ONSC 485, at paras. 10-11. In *Manufacturers and Traders Trust Company v. Amlinger*, 2006 CanLII 29662 (ON SC), at paras. 56-57, the court held that the plaintiff was entitled to its costs on a substantial indemnity basis because of a provision in the guarantee which provided for recovery of its "actual attorney's fees and disbursements". While Perell J. ultimately adjusted some of the plaintiff's time, substantial indemnity costs were awarded: see *Manufacturers and Traders Trust Company v. Amlinger*, 2006 CanLII 34342 (ON SC).

[24] I find that substantial indemnity costs is the appropriate scale of costs, having regard to the terms of the Guarantee, the nature of the allegations made by Guido in his defence and counterclaim and his litigation conduct. However, like in *Amlinger*, the quantum of the total costs claimed needs to be adjusted, particularly with regard to the factors at Rule 57.01(0.a) and (0.b).

[25] The lawyers for the Bank cannot be faulted for spending the time to address the serious allegations that Guido made, even if unfounded. The Bank had the initial onus on the motion to demonstrate that there was no issue that required a trial. However, the differential in the number of hours is quite significant (the Bank's legal professionals roughly spend three times the total hours compared to Guido's lawyer).

[26] This is not about the number of legal professionals involved, as Guido's cost submissions suggest. That is not necessarily a measure of inefficiency or over charging; there is no indication that too many lawyers were involved in a single task. Having a number of individuals at the ready to perform different tasks requiring different skills at different hourly rates is not something that should be penalized or punished in a costs award. Nor does the lower hourly rate of Guido's lawyer dictate the appropriate rate for calculating the costs of the Bank's lawyers whose higher hourly rates were known to Guido (and therefore could not have been surprising to him), from prior costs awards that had been made in this proceeding.

[27] However, when it comes to the Rule 57.01 (0.a) and (0.b) factors, I do find that there is a disconnect between the total number of hours (600 vs 226), and between the amount that Guido could reasonably expect to pay in relation to the summary judgment motion and the action having regard to what his lawyer's bill of costs indicates. The difference in the amounts of costs claimed between the Bank's lawyers and Guido's lawyer are more than four-fold: \$380,590 vs \$80,600 on a substantial indemnity scale or \$255,260 vs \$53,725 on a partial indemnity scale.

[28] There is no precise formula by which to adjust costs claimed to take into account the various Rule 57 factors. It is necessarily an imprecise, discretionary exercise. In the exercise of my discretion under s. 131 of the *Courts of Justice Act*, and having regard to the relevant factors under Rule 57.01 and to the principles of proportionality, fairness and reasonableness, I am reducing the substantial indemnity costs to be awarded to the Bank for the summary judgment motion and the action to a fixed amount of \$280,000 (inclusive of HST), plus the claimed and undisputed

disbursements of \$4,896.67 (inclusive of applicable taxes), all of which are ordered to be paid by Guido forthwith.

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Kimmel J.

**Released:** February 7, 2025