

COURT OF APPEAL FOR ONTARIO

CITATION: Arcamm Electrical Services Ltd. v. Avison Young Real Estate
Management Services LP, 2025 ONCA 84
DATE: 20250203
DOCKET: COA-23-CV-0602

Simmons, Gillese and Coroza JJ.A.

BETWEEN

Arcamm Electrical Services Ltd.

Plaintiff/Moving Party
(Respondent)

and

Avison Young Real Estate Management Services LP and 4342 Queen St.
Niagara Holdings Inc.*

Defendants/Responding Parties
(Appellant*)

Jeffrey Kaufman and Bradley Adams, for the appellant

Michael Mazzuca and Broghan Masters, for the respondent

Heard: October 9, 2024

On appeal from the judgment of Justice Elizabeth C. Sheard of the Superior Court of Justice, dated February 17, 2023, with reasons reported at 2023 ONSC 1151.

COSTS ENDORSEMENT

[1] In reasons dated December 19, 2024 (the “Reasons”), this court allowed the appeal of 4342 Queen St. Niagara Holdings Inc. (“Queen”) in this proceeding and ordered Arcamm Electrical Services Ltd. (“Arcamm”) to pay costs of the appeal. Arcamm was also ordered to pay Queen costs of the underlying summary

judgment motion (the “Motion”). The Reasons provide that if Queen and Arcamm are unable to agree on costs of the Motion, they may make written submissions on the same to this court. The parties have been unable to reach an agreement on costs of the Motion and the court has now received their written submissions on that matter.

[2] The parties’ cost submissions raise the following issues: (1) should costs of the Motion be reserved to the trial judge or decided now; (2) if they are to be decided now, is the amount that Queen seeks on a partial indemnity basis excessive; and (3) what consideration, if any, should be given to the costs order below in respect of Avison Young Real Estate Management Services LP (“Avison”)?

Costs of the Motion are decided now

[3] Arcamm submits that costs of the Motion should be reserved to the trial judge. It contends that because of the voluminous record on the Motion and the ongoing nature of the proceeding, the trial judge will be in a better position to assess and determine the quantum of Queen’s costs on the Motion.

[4] We do not accept this submission. Instead, we will follow the court’s practice and decide costs of the Motion now.

[5] As a general principle, costs follow the event. Thus, when an appeal is allowed, this court’s general practice is to set aside the costs order below and

award the successful appellant costs below and of the appeal: *St. Jean v. Cheung*, 2009 ONCA 9, at para. 4; *Hunt v. TD Securities Inc.* (2003), 40 B.L.R. (3d) 156, 66 O.R. (3d) 481 (C.A.), at para. 2, leave to appeal to S.C.C. refused, [2003] S.C.C.A. No. 473. For this reason, s. 18(1) of the court's practice direction instructs parties to be prepared to address all costs issues at the hearing of the appeal (emphasis added): "Practice Direction Concerning Civil Appeals in the Court of Appeal", (March 1, 2017).

[6] We see no reason to depart from the court's general practice in this case. Consequently, the court will decide costs of the Motion now, rather than leaving that matter to the trial judge.

The quantum of costs

[7] Below, Queen submitted a single costs outline for both the Motion and Avison's motion for summary judgment which were returnable on the same date. We discuss Avison's motion for summary judgement more fully in the following section of this endorsement.

[8] Queen's costs outline below showed total costs of \$68,308.50, on a partial indemnity basis, for both motions. In Queen's costs submissions now before this court, based on its apportionment of the costs sought below, Queen seeks costs of the Motion, on a partial indemnity basis, of approximately \$47,660, all inclusive.

Queen maintains its apportionment reflects that a majority of its time was spent responding to the Motion, rather than to Avison's summary judgment motion.

[9] Arcamm submits that the two motions were so closely intertwined that Queen's claimed apportionment is inappropriate. It asks that Queen's costs of the Motion, on a partial indemnity basis, be limited to \$25,500, all inclusive.

[10] The court accepts Queen's submissions on this matter. Queen was the successful party on the Motion. The fees and time Queen spent on the Motion were reasonable, given the amounts claimed, the complexity of the Motion, and the importance of the issues raised on the Motion. We also note that the amount Queen seeks by way of partial indemnity costs is a fraction of the partial indemnity costs of \$148,813 that Arcamm had been awarded on the Motion.

The costs order below in respect of Avison remains in effect

[11] The costs order below addressed two summary judgment motions: (1) Arcamm's summary judgment motion (previously defined as the "Motion"); and (2) Avison's summary judgment motion brought on its crossclaim against Queen for indemnification pursuant to its management services agreement with Queen.

[12] Avison's summary judgment motion succeeded in large part because the motion judge found that Queen had wrongfully tried to shift responsibility for the Arcamm claims from itself to Avison with the result that Arcamm had been required to pursue its Motion against Avison as well as Queen. The motion judge dealt with

costs of both summary judgment motions in a single set of reasons. One order that she made required Queen to pay Avison's partial indemnity costs in defending the Motion in the amount of approximately \$46,000 (the "Avison Costs Order").

[13] In its current costs submissions, Queen argues that the result on appeal "fundamentally altered the premise" on which the Avison Costs Order was made. It asks the court to set aside the Avison Costs Order and require Arcamm to pay those costs to Avison.

[14] Arcamm submits that the court should disregard Queen's submissions on this matter, essentially because Queen had not raised the Avison Costs Order on its appeal.

[15] We accept Arcamm's submission.

[16] On this appeal, Queen did not raise the dismissal of Arcamm's claim against Avison nor did it seek relief against the Avison Costs Order. Consequently, on the return of the Motion, when Avison rose and sought permission to address the court on the Avison Costs Order, the court declined to hear from Avison. As the court stated at that time, Queen had not raised the Avison Costs Order as part of its appeal and, therefore, that matter was not before the court.

[17] In the circumstances, we have not considered Queen's submissions relating to the Avison Costs Order and that order remains in effect.

Disposition

[18] Accordingly, an order shall go requiring Arcamm to pay Queen costs of the Motion fixed at \$47,660, all inclusive.

“Janet Simmons J.A.”

“E.E. Gillese J.A.”

“S. Coroza J.A.”