

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
2811230 Ontario Limited)
) Alisa Chaly, self-represented, for the
Applicant) Applicant
)
– and –)
)
The Corporation of the City of Niagara) Andre Dobrogeanu, for the Respondents
Falls, James Diodati and Brian Sparks)
)
Respondents)
)
)
)
) **HEARD:** In Writing

2025 ONSC 2961 (CanLII)

COSTS DECISION

JUSTICE L. SHEARD

- [1] The Applicant, 2811230 Ontario Limited (“281Ont”), is an Ontario Corporation. Its sole director, officer and owner is Alisa Chaly. Ms. Chaly purchased 5759 Robinson Street, Niagara Falls (the “Property”) and title was registered in the name of 281Ont. Ms. Chaly undertook renovations to the Property without applying for a building permit.
- [2] When the renovations came to the attention of the Respondent, the City of Niagara Falls (the “City”), it issued an Order to Comply under s. 8(1) of the *Building Code Act* (the “Act”) No. ORB-2022-0045 (the “OTC”). The OTC directed 281Ont to take certain steps to comply with the *Act*.
- [3] 281Ont neither appealed, nor sought a review of the OTC. On August 31, 2022, the City registered the OTC on title to the Property.
- [4] 281Ont brought an Application seeking an order deleting the registration of the OTC from title to the Property. According to 281Ont, the presence of the OTC on title made it impossible to sell or remortgage the Property.

- [5] The Application was dismissed. The facts and findings are set out in detail in my Reasons for Judgment released January 29, 2025 (the “Reasons”) and need not be repeated here.
- [6] On consent, the dismissal was without prejudice to the positions the parties may wish to take in respect of the Cross-Claims raised in a separate proceeding, commenced in the Ontario Superior Court of Justice at St. Catharines, Ct. File No. CV-24-62347.
- [7] The Reasons identified that as the successful party on the Application, the City was presumptively entitled to its costs of the Application. To date, costs submissions have been received only from the City, and the deadline for 281Ont to deliver responding submissions expired on March 4, 2025.
- [8] In making this decision, I have considered the record before me, the City’s costs submissions, and the applicable rules, legal principles, and jurisprudence.

Position of the City

- [9] The City seeks costs of \$12,917.56 on a substantial indemnity basis, or, alternatively, in the amount of \$9,145.67, on a partial indemnity basis.
- [10] The City submits that 281Ont’s conduct unnecessarily lengthened the duration of the proceeding¹ both by: seeking a number of adjournment requests; bringing a last-minute motion to allow Ms. Chaly to represent 281Ont; at the outset of the hearing, requesting that the application be adjourned and/or transferred to a different court site, which lengthened the hearing from a half-day to a full day; and, on the Application, by addressing issues not before the court in written materials and in oral argument at the hearing.
- [11] The City submits that the costs it seeks are within the reasonable expectation of 281Ont. The City’s submissions are based, in part, on the Costs Outline filed by Ms. Chaly in which she sought costs of \$2,503.75 on her unopposed motion for leave for leave to represent 281Ont.
- [12] Finally, the City submits that costs should be awarded on an elevated scale, given the finding of this court that the Application itself was without merit and brought for an improper motive. That finding can be found at paras. 58 and 59 of the Reasons, which state:

[58] On the facts here, 281Ont is seeking the discharge of the OTC, while it is still in effect and valid. I conclude that the Applicant’s objective in bringing this Application is to hide the existence of the OTC from public view so that 281Ont may more easily sell or refinance the Property.

[59] I find that the result sought by 281Ont would run counter to the very purpose for which the OTC was registered, namely, to give notice

¹ A factor to be considered under r. 57.01(1)(e).

to a buyer or mortgagee that renovations had been completed on the Property without a building permit and without the City inspections that accompany that process, which is “intended primarily for consumer protection from shoddy and incompetent work and to ensure safety”: *Lemieux*, at para. 28.

The Law

[13] The court’s jurisdiction to award costs is found under section 131 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43 (the “CJA”) and is subject to in the Rules of Civil Procedure, R.R.O. 1990, Reg. 194, and the jurisprudence.

[14] Rule 57.01 reads:

(1) In exercising its discretion under section 131 of the *Courts of Justice Act* to award costs, the court may consider, in addition to the result in the proceeding and any offer to settle or to contribute made in writing,

(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;

(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;

(a) the amount claimed and the amount recovered in the proceeding;

(b) the apportionment of liability;

(c) the complexity of the proceeding;

(d) the importance of the issues;

(e) the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding;

(f) whether any step in the proceeding was,

(i) improper, vexatious or unnecessary, or

(ii) taken through negligence, mistake or excessive caution;

(g) a party’s denial of or refusal to admit anything that should have been admitted;

(h) whether it is appropriate to award any costs or more than one set of costs where a party,

- (i) commenced separate proceedings for claims that should have been made in one proceeding, or improper, vexatious or unnecessary, or
- (ii) in defending a proceeding separated unnecessarily from another party in the same interest or defended by a different lawyer;

(h.1) whether a party unreasonably objected to proceeding by telephone conference or video conference under rule 1.08; and

(i) any other matter relevant to the question of costs.

[15] In *394 Lakeshore Oakville Holdings Inc. v. Misek*, 2010 ONSC 7238 (CanLII), [2010] O.J. No. 5692 (Ont. S.C.J.) (“*Lakeshore*”), Perell J. reformulated the purposes of the modern costs rules, at para. 10, as follows:

- (1) to indemnify successful litigants for the costs of litigation, although not necessarily completely;
- (2) to facilitate access to justice, including access for impecunious litigants;
- (3) to discourage frivolous claims and defences;
- (4) to discourage the sanctioning of inappropriate behaviour by litigants in their conduct of the proceedings; and
- (5) to encourage settlements.

[16] Overall, the objective is to fix an amount that is fair and reasonable, having regard for, among other things, the expectations of the parties concerning the quantum of costs: *Boucher v. Public Accountants Council for the Province of Ontario* (2004), 71 O.R. (3d) 291 (C.A.) at paras. 26 and 38.

[17] A costs award should reflect what the court views as a fair and reasonable contribution by the unsuccessful party to the successful party rather than any exact measure of the actual costs to the successful litigant: *Zesta Engineering Ltd. v. Cloutier*, 2002 CanLII 25577 (ON CA), 2002 CarswellOnt 4020, 118 A.C.W.S. (3d) 341 (C.A.), at para. 4; *Fehr et al. v. Sun Life Assurance Company of Canada*, 2021 ONSC 8368 (CanLII), at para. 83.

Analysis

[18] I accept the City’s submissions that 281Ont’s conduct caused delay and lengthened the proceeding unnecessarily. The record before the court on the Application fully supports this finding.

[19] In addition, as explained in the Reasons, 281Ont’s objective in bringing the Application was improper, and, as such, the purposes of costs rules as set out by Perrell J. at paras. 10

(3) and 10 (4) of *Lakeshore* have application here: the costs awarded on this Application ought to discourage 281Ont's frivolous claim and sanction its appropriate conduct.

[20] Based on the foregoing, I also accept the City's submission that this is an appropriate case for an award of costs on an elevated scale.

Disposition

[21] In consideration of the r.57 factors, the applicable jurisprudence, and the reasonable expectation of 281Ont, I fix the City's costs of this application on an elevated scale as follows: fees and disbursements at \$10,058 (80%) plus disbursements with HST at \$1,601.90, for a total costs award of \$11,659.90.

[22] The costs awarded to the City are payable, forthwith, by 281Ont.

Justice L. Sheard

Released: May 20, 2025

CITATION: 2811230 Ontario Limited v. City of Niagara Falls, et al., 2025 ONSC 2961
COURT FILE NO.: CV-24-84955
DATE: 2025/05/20

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SUPERIOR COURT OF JUSTICE

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2811230 Ontario Limited

Applicant

-and-

The Corporation of the City of Niagara Fall, James
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Respondents

COSTS DECISION

Justice L. Sheard

Released: May 20, 2025