

CITATION: Kinariwala v. Ruiz, 2025 ONSC 760
COURT FILE NO.: CV-23-842
DATE: 2025/02/03

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Hardik Bharatkumar Kinariwala, Plaintiff

AND:

Deborah Del Socorro Ruiz a.k.a. Deborah Ruiz, Defendant

BEFORE: The Honourable Mr. Justice G. E. Taylor

COUNSEL: Siddharth S. Joshi, Counsel for the Plaintiff

Stephen Gadbois, Counsel for the Defendant

HEARD: In Writing

COST ENDORSEMENT

[1] This was a motion for summary judgment arising out of a failed real estate transaction. Judgment was granted in favour of the plaintiff for \$106,061 plus pre-judgment interest in the amount of \$12,706.40 for a total of \$118,767.40. The parties have made written submissions with respect to costs. These are my reasons for costs of the action.

[2] On November 13, 2022, the plaintiff made an Offer to Settle the action for the all-inclusive amount of \$120,000. This Offer was compliant with the provisions of rule 49 of the *Rules of Civil Procedure*. The Offer was not accepted.

[3] The plaintiff submits that the aggregate of the damages (\$106,061), prejudgment interest to the date of the judgment (\$12,706.40), post judgment interest and costs would exceed \$120,000.00 and therefore the plaintiff obtained a judgment more favourable than the amount of the Offer to Settle. The plaintiff therefore says costs should be awarded on a partial indemnity basis to November 23, 2022 (the date the Offer was served) and on a substantial indemnity basis thereafter.

[4] The defendant submits that the plaintiff's Offer is to be assessed at the date it was made. As of the date of the plaintiff's Offer to Settle, the defendant did not owe the plaintiff an aggregate amount of \$120,000 or more.

[5] I agree with the position of the defendant. The plaintiff's Offer to Settle was an "all-inclusive" offer that proposed a lump sum for damages, pre-judgment interest, post-judgment interest and costs. In evaluating such an all-inclusive offer to settle, it is appropriate to compare the amount recovered at trial, plus interest and costs up to the date of the offer to settle (2287913 *Ontario Inc. v. ERSP International Enterprises Ltd.*, [2022] O.J. No. 1237, at para. 30).

[6] By my calculation the defendant would, at most, have owed the plaintiff approximately \$7,200 in interest to November 23, 2023 (\$106,061 damages x 4.8% annual interest for x 17 months). From the plaintiff's Bill of Costs, it is not possible to determine the plaintiff's costs for the pleadings stage of the action. However, without specifying how the amount was calculated, paragraph 9 of the plaintiff's Costs Submissions states that partial indemnity fees of \$3,840 were incurred before November 23, 2022. Therefore, accepting the amount for partial indemnity fees to the date of the Offer to Settle as claimed by the plaintiff, the plaintiff's Offer to Settle, when analysed as of the date it was made, was for \$117,101.00 (\$106,061 damages plus \$7,200 in interest plus \$3,840 in costs). This amount is not as favourable as the judgment on the motion.

[7] I therefore find that the plaintiff is not entitled to substantial indemnity costs from the date of the Offer, pursuant to rule 49 of the *Rules of Civil Procedure*.

[8] The plaintiff also submits that an award of substantial indemnity costs is justified on the basis of the alleged failure of counsel for the defendant to cooperate in scheduling a date for the hearing of the summary judgment motion.

[9] An award of elevated costs is justified only on a clear finding of reprehensible conduct on the part of the party against whom the cost award is being made (*Davies v. Clarington*, [2009] O.J. No. 4236, at para. 40, (Ont. C.A.)). In my view, not agreeing with counsel's suggested date for hearing of a summary judgment motion or seeking an adjournment of the motion after a date has

been set, does not amount to “reprehensible conduct” which justifies the sanction of an award of substantial indemnity costs.

[10] The plaintiff seeks partial indemnity costs of \$14,229 for fees, \$1,849.77 for HST and \$860.87 for disbursements including HST for a total of \$16,939.64. The defendant complains about there being excessive time spent on some aspects of this action without specifying an amount or amounts which are claimed to be excessive.

[11] The defendant’s Bill of Costs suggests that her partial indemnity fees total \$9,600 based on an hourly rate of \$240 for counsel responsible for the file. This is to be compared to the hourly rate of lead counsel for the plaintiff of \$210. The material for the motion was well prepared and the argument was presented appropriately by both counsel.

[12] I am fixing costs, as opposed to assessing them. The amount awarded in costs must be reasonable from the perspective of the unsuccessful party. In my view liability was clear. In making the decision to defend this action, the defendant must have had in contemplation that a significant cost award would be a potential outcome. The plaintiff is entitled to be indemnified for the reasonable costs incurred in obtaining judgment.

[13] The plaintiff is entitled to costs of the action on a partial indemnity basis in the amount of \$15,000.00 inclusive of disbursements and HST. These costs are payable forthwith.

G.E. Taylor J.

Date: February 3, 2025