CITATION: Wai-Cheong Sin v. Kela Medical Inc., 2025 ONSC 5519
COURT FILE NO.: CV-19-00628071-0000
DATE: 20251025

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
WAI-CHEONG SIN a.k.a. DANIEL SIN	)	Nick Poon, for the Plaintiff
	)	
Plaintiff	)	
	)	
– and –	)	
	)	Barbara Miller and Danielle Muise, for the
KELA MEDICAL INC., ARJUN KUMAR, NARESH KUMAR and SPQKUMAR INC.	)	Defendants
	)	
Defendants	)	
	)	
	)	
	)	
	)	**HEARD:** In writing

COSTS ENDORSEMENT

A.P. RAMSAY J.

[1] In Reasons for Judgment reported at *Sin v. Kela Medical Inc*., 2024 ONSC 6767, I dismissed, in its entirety, the plaintiff's action against the defendants for relief under the *Business Corporations Ac*t, R.S.O. 1990, c. B.16 for oppressive conduct and, in the alternative, damages for breach of contract, and a breach of the duty of good faith, or an award of 33 percent of the net proceeds of sale of an non-party corporation. I also dismissed the plaintiff's action against the individual defendants in their personal capacity.

[2] I have considered the plaintiff's Cost Submissions as well as the supplementary costs submissions and, with respect to the defendants, I have considered the Responding Submissions, and Reply Submissions, despite my direction that there should be no Reply Costs Submissions, because of the manner in which costs submissions were filed.

I. Position of the parties

[3] The defendants seek costs in the amount of $601,832.89, calculated on a partial indemnity basis up to the date of their first offer to settle dated November 5, 2021, and on a substantial

indemnity basis after the date of the first offer. Alternatively, the defendants seek partial indemnity costs for the duration of the proceeding, in the amount of $431,438.42. The defendants' Cost Submissions do not make clear the amount they say is subject to the partial indemnity scale up to the time of their first offer to settle. They argue that the court should award serious costs because of the allegations of fraud the plaintiff made against the defendants.

[4] The plaintiff argues that the amount sought by the defendants is excessive. The plaintiff also argues that success was divided. The plaintiff contends that the defendants' costs is, at most, between $75,000 to $100,000, plus HST and reasonable disbursements.

II. Disposition

[5] For the reasons below, I award the defendants costs on a partial indemnity scale of $225,000, plus HST of $29,250.

[6] I have allowed disbursements of $5,000.

III. Analysis

[7] Section 131(1) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, governs the court's jurisdiction to award costs and provides that:

> Subject to the provisions of an Act or rules of court, the costs of and incidental to a proceeding or a step in a proceeding are in the discretion of the court, and the court may determine by whom and to what extent the costs shall be paid.

[8] In the absence of misconduct, a successful litigant has a reasonable expectation of recovering costs from the unsuccessful party: *B. (R.) v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 S.C.R. 315, at p. 404; *Bell Canada v. Olympia & York Developments Ltd.*, [1994] ONCA 239, 17 O.R. (3d) 135, at p. 14; *Wesbell Networks Inc. v. Bell Canada*, 2015 ONCA 33, at para. 22.

[9] In exercising its discretion with respect to costs, the court must consider the factors in r. 57.01(1) of the *Rules of Civil Procedure* to achieve a just and reasonable determination: *Wasserman, Arsenault Ltd. v. Sone*, [2002] 164 O.A.C. 195, 38 C.B.R. (4th) 119, at para. 5.

[10] The defendants were entirely successful. There is no suggestion of any misconduct. Therefore, I find no basis to depart from the general rule that a successful party is presumptively entitled to their costs.

IV. Success was not divided

[11] The plaintiff submits that success was divided because the plaintiff successfully defended "against the defendants' various breach of contract defences such as the alleged renegotiation and attempts to imply terms."

[12] I agree with the defendants that success was not divided. Since the plaintiff failed to succeed on any of his claim, he is, in effect, seeking an award of distributive costs. I am not satisfied that this is an appropriate case for distributive costs. In any event, because the plaintiff's breach of contract claim was dismissed, I do not accept that any success he may have achieved on an issue related to some of the defences advanced by the defendant is relevant to deciding which party achieved overall success.

[13] Costs of actions are to be determined by considering the overall success achieved by a party: *Wesbell Networks Inc.*, at para. 21; *Fram Elgin Mills 90 Inc. v. Romandale Farms Limited*, 2021 ONCA 381, at para. 10. Costs are not determined by considering success on an issue-by-issue basis: *Fram Elgin*, at para. 10.

[14] While an order for distributive costs is not foreclosed in a proper case, such an order will only be appropriate in rare circumstances: *Skye v. Matthews*, [1996] 87 O.A.C. 381, at paras. 15 and 19. However, the court has discretion to consider a party's limited success, even where an award of distributive costs is not available: *Eastern Power Limited v. Ontario Electricity Financial Corporation*, 2012 ONCA 366, at para. 19. The Ontario Court of Appeal has noted that "[i]ndividual issues can be dealt with more appropriately under the general discretion and explicit guidance set forth in rule 57.01(1)": *Eastern Power*, at para. 18, citing *Armak Chemicals Ltd. v. Canadian National Railway Co.* [1991], 5 O.R. (3d) 1, at pp. 8-9; *Murphy v. Alexander*, [2004] 236 D.L.R. (4th) 302.

[15] This is not such a case. The plaintiff was not successful on any of the claims made against the defendants. The fact that he may have succeeded on certain issues is not equivalent to the plaintiff being successful on any of the claims advanced against the defendants. His entire action was dismissed.

V. Scale of costs

[16] The defendants are asking for costs on a substantial basis. They rely on two offers to settle, the first delivered in November 2021 and the second delivered in March 2022.

[17] The plaintiff submits that neither offer comply with r. 49. He argues that the first offer was withdrawn by the second offer, and therefore was not open for acceptance at the commencement of trial. He further submits that both offers contained a release. The plaintiff challenges the fact that the defendants have applied the costs consequences, seeking substantial indemnity costs, after their first offer to settle.

[18] I agree with the plaintiff that the defendants withdrew the first offer. The defendants' second offer stated: "All previous offers are hereby withdrawn." A subsequent offer can resurrect a previous offer which has been rescinded: see, *Symmers v. Garford* (1987), 29 A.C.W.S. (3d) 926 (Ont. Dist. Ct.)); *Bifolchi v. Sherar (Litigation Administrator of)* [1995], 25 O.R. (3d) 637, varied on other grounds, [1998], 38 O.R. (3d) 772. However, this did not occur in this case. Only the second offer remained open for acceptance until the commencement of trial.

[19] The second offer also included a provision for a full and final release in favour of the defendants "on terms acceptable to counsel, acting reasonably." In fact, both offers included a term requiring a release, but I need not address the first offer as it was withdrawn.

[20] Neither party addressed the fact that there is no provision under r. 49 which addresses substantial indemnity costs for a defendant when the defendant delivers an offer to settle, nor the authority dealing with costs consequences flowing from a defendant's offer to settle when the action is dismissed. While the defendants contend that "the costs consequences of Rule 49.10 do not technically apply where the Applicant fails to recover any judgment", they argue that paragraph (c) of subrule 57.01(4) permits the court to award all or part of a party's costs on a substantial indemnity basis, which, the defendants maintain is appropriate for the costs that they incurred after delivery of their first offer.

[21] In my view, nothing in this subrule, independent of the costs consequences which flow from an offer to settle, gives the court authority to award substantial indemnity costs. Rule 49.10(2) governs the costs consequences for a defendant who has delivered an offer to settle in writing at least seven days before the trial, which is not accepted by the plaintiff, and the plaintiff recovers a judgment that is as favourable as or less favourable than the terms of defendant's offer to settle. The costs consequences which flow from a defendant's offer do not contemplate any recovery of substantial indemnity costs by a successful defendant. In this case, the plaintiff's action was entirely dismissed against the defendants. The provisions in r. 49 therefore do not apply: *S&A Strasser Ltd. v. Richmond Hill*, [1990], 1 O.R. (3d) 243; *Davies v. Clarington (Municipality) et al.*, 2009 ONCA 722, 100 O.R. (3d) 66; *Iannarella v. Corbett*, 2015 ONCA 110, 124 O.R. (3d) 523.

[22] The jurisprudence establishes that subrule 49.10(2) applies where a defendant exceeds its offer to settle and where the plaintiff has recovered a judgment of some value: *S & A Strasser Ltd*.; *Dunstan v. Flying J Travel Plaza*, 2007 CanLII 44819 (Ont. S.C.).

[23] There is no equivocation about whether the costs consequences under r. 49.10 applies. It does not. Where the plaintiff's claim fails, r. 49.10 has no application: *Davies*, at para. 38 ; *Iannarella*, at para. 139 ; *Scapillati v. A. Potvin Construction Ltd.* [1999], 44 O.R. (3d) 737. Therefore, Ontario's highest court has put that question to rest. However, I note that despite the dismissal of the action against them, the defendants did not argue that I should exercise my discretion to award costs on a substantial indemnity elevated costs basis.

[24] In *Strasser,* Carthy J.A., indicated that the defendant's offer was not a rule 49.10 offer, but noted that the language of rules 49.13 and 57.01 gives the court discretion with respect to costs, with r. 49.13 allowing the court to consider any offer in writing. The trial judge resorted to r. 49.13, which permits the trial judge to consider any offer made in writing, in awarding substantial indemnity costs. However, the Court of Appeal has since noted that "the development of this court's approach to awards of substantial indemnity costs has evolved since *Strasser*": *Iannarella*, at para. 139; *Davies*, at paras. 37-38. The Court of Appeal has also noted that implicit in *Strasser* is that the trial judge found egregious behaviour worthy of sanction: *Davies*, at para. 39.

[25] I must therefore reject the defendants' argument that subrule 57.01(4) in combination with r. 49.13 provides a trial judge authority to award elevated costs. The Court of Appeal has rejected this very argument. In *Davies*, Epstein J.A., speaking for the Court, stated: "The judicial discretion under rules 49.13 and 57.01 is not so broad as to permit a fundamental change to the law that governs the award of an elevated level of costs": at para. 40.

[26] The Ontario Court of Appeal has repeatedly noted that apart from the operation of r. 49.10, the court should not award elevated costs unless there is egregious or reprehensible conduct on the part of a party that warrants sanction: *Iannarella*, at paras. 138-139; *St. Elizabeth Home Society v. Hamilton (City)*, 2010 ONCA 280, 319 D.L.R. (4th) 74, at para. 92; *McBride Metal Fabricating Corp. v. H. & W. Sales Co.* [2002], 59 O.R. (3d) 97, at para. 39; *Davies*, at paras. 28 and 40.

[27] The Supreme Court has also articulated that elevated costs are warranted only where there has been reprehensible, scandalous, or outrageous conduct on the part of one of the parties: *Young* v. *Young*, [1993] 4 S.C.R. 3, at p. 134.

[28] I must also agree with the plaintiff that neither of the defendants' offers to settle comply with r. 49. The terms of an offer to settle under r. 49 of the *Rules* must be "crystal clear": *Rooney (Litigation Guardian of) v. Graham* [2001], 53 O.R. (3d) 685, at paras. 43, 44, and 51; *Malik v. Sirois* [2003], 176 O.A.C. 348, at para. 2; *Davies v. The Corporation of the Municipality of Clarington*, 2019 ONSC 2292, at para. 100.

[29] Several cases have concluded that the inclusion of a term requiring a release in an offer to settle which is to be negotiated and agreed upon in the future introduces uncertainty, and a future unknown: see, *Kidane v. City of Toronto*, 2024 ONSC 4267, at paras. 13-16; *D'Anscenzo v. Nichols*, 2018 ONSC 7760, at para. 27; *Skafco Limited v. Abdalla*, 2020 ONSC 5437, at para. 2; *Zou v. Sanyal*, 2019 ONSC 1661, at paras. 7-10. The second offer was not definite because the terms of the full and final release were to be negotiated and agreed upon in the future.

[30] Neither party has referred to the decision of the Ontario Court of Appeal in *Cobb v. Long Estate*, 2017 ONCA 717. In *Cobb*, MacFarland J.A, speaking for the majority regarding the issue of the uncertainty occasioned by ongoing partial indemnity costs, concluded that the defendant's offer was still a valid r. 49 offer. However, neither party addressed whether this case in relation to the release and therefore, I make no determination on this point.

[31] The plaintiff underlined that the defendants' offers indicated the full and final release in favour of the defendants was to be "on terms acceptable to counsel, acting reasonably", which, in my view, introduces uncertainty because it is not clear what the parties mean by the phrase. Offers to settle must be clear, definite, and unequivocal as to what is being offered so the other side is aware of what is being accepted: *Bifolchi*, at para. 23, aff'd on other grounds, *Bifolchi* [1998]; *Yepremian v. Weisz* [1993], 16 O.R. (3d) 121, at pp. 5-6.

[32] Further, as the plaintiff notes, the second offer included a term wherein the defendant, SPQKumar Inc., was to purchase the plaintiff's shares in Kela Medical Inc. I made no such order at the trial. The defendants bear the onus of showing that their second offer was more favourable than the judgment. They have not addressed this issue.

[33] In my view, the appropriate scale of costs is partial indemnity.

a) The court may consider any offer in writing

[34] The defendants appear to concede that the inclusion of a release may impact whether their offers are valid under r. 49. They state that even though their offers included a requirement for a release, the court may take them into account in awarding costs. I agree with the defendants' position on this point.

[35] The jurisprudence establishes that even if an offer does not technically meet the requirements of r. 49 of the *Rules*, under r. 49.03, the court may still consider any offer made in writing pursuant to r. 49.13: *Elbakhiet v. Palmer*, 2014 ONCA 544, 121 O.R. (3d) 616, at para. 33; *König v. Hobza*, 2015 ONCA 885, 129 O.R. (3d) 57, at paras. 35, 37. The Court of Appeal has repeatedly noted that r. 49.13 "is not concerned with technical compliance with the requirements of rule 49.10": *Elbakhiet*, at para. 33; *Lawson v. Viersen* 2012 ONCA 25, 108 O.R. (3d) 771, at para. 46. The Court noted that r. 49.13 "calls on the judge to take a more holistic approach": *Elbakhiet*, at para. 33; *Lawson*, at para. 46.

[36] I am satisfied that the defendants made attempts to compromise and resolve the litigation before either party incurred significant costs. There is no evidence before me that the plaintiff made any attempts to compromise. It difficult for the court to evaluate the success of the defendants offer because of the requirement to purchase the plaintiff's shares in SPQKumar Inc., an issue that was not before the court.

b) Allegations of fraud

[37] The defendants say that there should be serious costs, because of allegations made by the plaintiff of fraud and fraudulent conduct. However, the defendants have not sought costs on a substantial basis because of any allegations of fraud or fraudulent conduct. I have therefore addressed this issue below as a factor to be considered in awarding costs.

VI. Factors considered by the court in exercising its discretion

i. *Amount claimed and amount recovered in the proceeding – R. 57.01(1)(a)***)**

[38] In determining costs, one of the overarching considerations is whether the costs award is reasonable, fair, and proportionate in the circumstances of the case, having regard to the factors set out in r. 57.01(1) and the reasonable expectations of the party: *Boucher v. Public Accountants Council for the Province of Ontario*, [2004], 71 O.R. (3d) 291, at para. 26.

[39] Rule 1.04(1.1) of the *Rules* enshrines the principle of proportionality, which provides:

> In applying these rules, the court shall make orders and give directions that are proportionate to the importance and complexity of the issues, and to the amount involved, in the proceeding.

[40] In exercising its discretion with respect to costs, the court must consider the amount claimed and the amount recovered in the proceeding. In addition to the various other relief, the plaintiff sought significant damages from the individual and corporate defendants to a value of more than $3,600,000. The plaintiff joined four defendants in this action. All claims were dismissed. The amounts awarded above is fair and proportionate given the amounts claimed and the outcome.

ii. Complexity of the proceeding – R. 57.01(1)(c)

[41] The proceedings were complex and grounded on claims of oppression, breach of contract, breach of the duty of good faith, and limitation defences. The issues were made more complicated because of claims advanced by the plaintiff against a non-party.

iii. Importance of the issues – R. 57.01(1)(d)

[42] The plaintiff submits this case was of moderate complexity, and involved claims for breach of contract and oppression remedy.

[43] The defendants say that the issues raised in this proceeding were extremely important to them and point to the plaintiff's allegations of bad faith, "fraudulent misdirection", oppression, misrepresentation, and deception.

[44] I agree with the defendants. This was not a straightforward breach of contract and oppression remedy case. The plaintiff also sought various other incidental relief, including a tracing order.

[45] The plaintiff argues that the statement of claim did not plead fraud. While I accept the plaintiff's argument did not plead fraud, the plaintiff alleged fraudulent conduct on the part of the defendants. At paragraph 150 of my decision, I stated:

> By the time of the closing address, the nature of the representation had migrated to fraudulent representation. The statement of claim is grounded in a claim for breach of contract and relief for oppression; the claim does not plead misrepresentation, either negligent or fraudulent. [Emphasis added.]

[46] At paragraph 168 of my decision, I stated:

> While the court finds that there is a special relationship between Mr. Sin, Mr. Kumar, and Kela, Mr. Sin has failed to establish, on the evidence, that these defendants made representations, or any representation, that was untrue, inaccurate, misleading, or fraudulent, as he later noted in his materials. [Emphasis added.]

[47] And, at paragraph 185 of my decision, I noted that:

> In his supplementary affidavit, Mr. Sin deposed:
>
> > In response to paragraph 37, I did not know that Mr. Kumar incorporated KAI without making Kela as the parent. His admission that he instead issued all the shares in KAI to the family holding company, SPQKumar, proves that the representation that I should receive a stake in Kela as an indirect stake in KAI was a fraudulent misdirection. [Emphasis added.]

[48] Allegations of fraud go to the heart of a person's very integrity, dignity, and reputation, and, when unfounded, may attract serious cost consequences because of their serious nature. *2651171 Ontario Inc. v. Brey*, 2022 ONCA 205, at para. 12; *Howard v. Howard*, 2023 ONSC 5342, at paras. 6, 16-18. I agree with the defendants that there should be serious costs because of the allegations of fraudulent conduct alleged by the plaintiff. While the allegations were not contained in the statement of claim, the allegations of fraudulent conduct were persistent. I have therefore considered this as a factor in awarding costs. It is reasonable for the defendants to incur costs to defend against claims of dishonesty and fraudulent conduct.

iv. Rates charged, hours spent by the party's lawyer(s) – R. 57.01(1) (0.a)

[49] When assessing proportionality, and the factors enumerated in r. 57 of the *Rules*, the principle of indemnity, the hourly rate claimed, time spent, and the amount the unsuccessful party reasonably expected to pay: *Chandran v. National Bank of Canada*, 2011 ONSC 4369, 95 C.C.E.L. (3d) 322, at para. 24, aff'd 2012 ONCA 205, 99 C.C.E.L. (3d) 277.

[50] The plaintiff argues that the rates charged, and hours spent by the defendants' lawyers are excessive. The plaintiff relies on the Costs Grid, which came into force in January 2002 by virtue of the *Rules*, which amended the provisions of the *Rules* related to costs on partial and substantial indemnity scales. The plaintiff also submits that there should be a reduction in time for duplication because of a change in representation. Further, he submits that costs associated with trial preparation and re-attendance at pre-trial conferences for each of the two trial sittings should be excluded and each party should bear their costs.

[51] I agree with the defendants that the Costs Grid has no application. First, the Costs Grid was revoked in 2005. There is ample authority which suggest that the maximum partial indemnity hourly rates "are now out of date, and that amounts calculated at 55%-60% of a reasonable actual rate might more appropriately reflect partial indemnity": *Inter-Leasing, Inc. v. Ontario (Revenue)*, 2014 ONCA 683, at para. 5; *Bain v. UBS Securities Canada Inc.*, 2018 ONCA 190, 46 C.C.E.L. (4th) 50, at para. 32.

[52] In considering the complexity of this case, and parties involved, and the factual matrix of this case, in my view, the rates charged by the defendants' lawyer Barbra Miller, who has 20 years' experience, and Danielle Muise, who has 9 years' experience, I find Ms. Miller's partial indemnity hourly rate which ranged between $465 to $570, and Mr. Muise's rate of between $210 and $375, are reasonable. The rates charged by Mr. Takenaka, given his over 30 years of experience, is also reasonable. The plaintiff does not appear to challenge the students' or the law clerks' partial

indemnity rates, but I find the $60 partial indemnity hourly rate for the students and the $80 partial indemnity hourly rate for the law clerks to be fair and reasonable.

[53] However, I agree with the plaintiff that the hours spent by the defendants' lawyers, are excessive. This matter started as an application before its conversion to an action. The parties did not exchange affidavits of documents. There were no oral discoveries completed. The parties did not participate in mediation. There were no interlocutory motions aside from pre-trial conferences and trial.

[54] Both parties agree the case was slated for trial March 21, 2022, and April 17, 2023. The plaintiff says the case was not reached due to the Covid-19 pandemic the backlog of cases at the Toronto court.

[55] I agree with the plaintiff that there should be some deduction for preparation for the trial that did not proceed on the two occasions. There are excessive hours noted for preparation for these two events and no indication as to when the trial was scheduled or what communication the parties received from the court to indicate that the trial was proceeding (despite references to numerous communications with the Trial Co-Ordinator). The summary also includes reference to the same tasks, for example, preparation of the case's opening, cross-examination etc., and it is not clear whether this is continuation of or repetition of the task, and which timekeepers are involved. Finally, the defendants' Bill of Costs includes items which are likely not assessable, or require an explanation including: editing, compiling, serving and filing, discussions, research, hyperlinking, and uploading documents into Case Center.

[56] I am reminded that costs should reflect an amount the court considers to be fair and reasonable rather than any exact measure of the actual costs to the successful litigant: *Zesta Engineering Ltd. v. Cloutier*, [2002] 21 C.C.E.L. (3d) 161, at para. 4. I did not find the defendants' Bill of Costs particularly helpful in determining which timekeeper completed the tasks summarized in the Bill, and how much time was devoted to these events by each of the timekeepers. It is not up to the court to pursue the dockets to ferret out information and make this calculation. Since the plaintiff raised the issue of time spent for preparation of the aborted trials, I will consider that issue, among others which I have highlighted from my review of the defendants' materials.

v. *Reasonable expectation of the parties – R. 57.01(1) (0.b)*

[57] The plaintiff relies on the Divisional Court decision of *Andersen v. St. Jude Medical, Inc*., [2006] 264 D.L.R. (4th) 557 (Div. Ct.), at para. 22, for the proposition that the reasonable expectation of the unsuccessful party is found in comparable cases.

[58] In *Murano v. Bank of Montreal*, [1998] 41 O.R. (3d) 222 at p. 249, the Court of Appeal noted that "Like cases, [if they can be found], should conclude with like substantive results." I agree with the defendants that the above cases are distinguishable.

[59] The plaintiff relied *Fernandes v. RBC Life Insurance Company*, [2008] 66 C.C.L.I (4th) 128, – costs awarded of $100,000, all-inclusive; (b) *Frank v. Bolton and Schneider*, 2018 ONSC

5593 – costs awarded of $50,000 to $100,000, plus disbursements; and (c) *DMX Plastics v. Misco Holdings*, 2009 CanLII 714 (ON SC) – costs awarded of $75,000, plus HST and disbursements. *Fernandes* involved a five-day trial by the plaintiff for coverage under a life insurance policy. Frank was a five-day medical negligence action, and DMX Plastics was a claim for damages by a tenant because of a leaky roof.

[60] Therefore, there is little risk of inconsistency of results because the cases relied upon by the plaintiff are not comparable. I also note that even though the trial in this matter was six days, much of the trial work for affidavits of the witnesses in chief was completed before the trial started, which shortened the number of days for the in-person trial but should not take away from the time required to prepare.

[61] Generally, the court looks to the amount claimed by the party liable for costs in their own Bill of Costs as a factor in determining that party's reasonable expectation regarding costs. The plaintiff filed a Bill of Costs which reveal his lawyers' costs on a partial indemnity basis in the amount of $66,454.50, after deducting $48,524.75, and in the amount of $132,909 on a substantial indemnity basis, after deducting $97,049.50. The plaintiff's disbursements amount to $3,583.94. The amounts deducted apparently relate to the adjournments of the two trials and a change in legal representation.

[62] I find the amount claimed by the plaintiff to be woefully low given the issues involved and the six days of trial. I have considered that the trial would have been much lengthier, but for the fact that the evidence in chief of the witnesses went in by way of affidavit. Therefore, the court must consider the reality that time was spent well preparing before the trial began.

VII. Conclusion

[63] Costs are not simply a mathematical calculation. Costs should reflect what is fair and reasonable and should be determined in accordance with what the losing party would reasonably expect to pay "rather than any exact measure of the actual costs to the successful litigant": *Zesta Engineering*, at para. 4.

[64] The overarching consideration for awarding costs is whether the cost award is reasonable, fair, and proportionate in the circumstances of the case, having regard to the factors set out in r. 57.01 of the *Rules* and the reasonable expectations of the party: *Boucher*, at para. 26.

[65] In considering the overarching principles above, and the factors set out in r. 57.01, appropriate to this case, and considering the allegations of fraudulent conduct made by the plaintiff, I find that $225,000, plus HST is fair, reasonable, and proportionate for costs.

[66] I would allow $5,000, inclusive for disbursements which is fair and reasonable in this case.

A.P. Ramsay J.

CITATION: Wai-Cheong Sin v. Kela Medical Inc. 2025 ONSC 5519

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

WAI-CHEONG SIN a.k.a. DANIEL SIN

Applicant

– and –

KELA MEDICAL INC., ARJUN KUMAR, NARESH KUMAR and SPQKUMAR INC.

Respondents

Costs Endorsement

A.P. Ramsay J.

Released: October 25, 2025