

Defendant shall have a further 14 days to respond. The Plaintiff, if necessary, may have a further 7 days for a brief reply. If I have not received any response or reply submissions within the specified timeframes after the Plaintiff's initial submissions, I will consider that the parties do not wish to make any further submissions and will decide based on the material that I have received.

- [3] The Plaintiff/Responding Party's Cost Submissions were served and filed on January 17, 2025. The Defendant/Moving Party had until January 31, 2025, to serve and file their Cost Submissions. No Cost Submissions have been received from the Defendant/Moving Party. In the circumstances, I conclude that it is appropriate to determine costs at this time.
- [4] The Plaintiff/Responding Party now seeks costs on a substantial indemnity basis.
- [5] The issues before me are as follows:
- a. Are substantial indemnity costs appropriate in the circumstances?
 - b. What is the appropriate quantum of costs?
- [6] For the following reasons, I have concluded that costs should be payable forthwith on a substantial indemnity basis by the Defendant/Moving Party to the Plaintiff/Responding Party. I fix costs payable to the Plaintiff/Responding Party in the amount of \$28,000.00, including fees, disbursements, and HST, payable forthwith.

Position of the Parties

Position of the Plaintiff/Responding Party

- [7] The Plaintiff/Responding Party submits that the following factors militate in favour of an elevated costs award:
- a. The Plaintiff/Responding Party was entirely successful.
 - b. The Defendant/Moving Party did not accept the offer to settle made by the Plaintiff/Moving Party following the completion of cross-examinations. The offer to settle sought the dismissal of the motion and payment of \$5,000 in costs by the Defendant/Moving Party.
 - c. The Defendant/Moving Party engaged in reprehensible, scandalous or outrageous conduct by:
 - i. Intentionally delaying the legal process, thereby suspending the Plaintiff/Responding Party's rights and entitlement for more than 18 months after the judgment was signed; and

- ii. Providing false and self-serving allegations. The Plaintiff/Responding Party points to numerous paragraphs in my Reasons for Decision where the evidence of the Defendant/Moving Party was rejected.

[8] Regarding quantum, the Plaintiff/Responding Party seeks \$28,000.00, all-inclusive. This is based on both the principle of indemnity and the fact that these were costs that the unsuccessful party could reasonably expect to pay. The Plaintiff/Responding Party points to the Defendant/Moving Party's Costs Outline for support for this position.

Position of the Defendant/Moving Party

[9] The Defendant/Moving Party has provided no Cost Submissions.

Analysis

Elevated Costs Are Appropriate

[10] Elevated costs may be warranted where the unsuccessful party has engaged in behaviour worthy of sanction.

[11] Where a party has engaged in reprehensible, scandalous, or outrageous conduct, a court may sanction this conduct through an award of elevated costs: *Davies v. Clarington (Municipality)*, 2009 ONCA 722, at para. 28; *Young v. Young*, [1993] 4 S.C.R. 3, at p. 134. Substantial indemnity costs are to be awarded "in rare and exceptional cases to mark the court's disapproval of the conduct of the party in the litigation": *Hunt v. TD Securities Inc.* (2003), 66 O.R. (3d) 481 (C.A.), at para. 123.

[12] In my view, the conduct of the Defendant/Moving Party is worthy of judicial rebuke and ought to trigger an elevated costs award.

[13] The Defendant/Moving Party intentionally and inappropriately delayed the legal process—depriving the Plaintiff/Responding Party of the rights and entitlements that flowed from the judgment signed more than 18 months ago.

[14] Moreover, I rejected numerous factual assertions by the Defendant/Moving Party regarding his belief/state of mind regarding his obligations. These are outlined in the Plaintiff/Responding Party's Cost Submissions in paragraph 3.

[15] The Defendant/Moving Party rejected a very reasonable offer to settle when there was little realistic chance of success, thereby necessitating the litigation of the motion, which was itself delayed.

[16] I conclude that costs should be awarded on a substantial indemnity basis.

Quantum of Costs

- [17] The costs fixed by the court “should reflect more what the court views as a fair and reasonable amount that should be paid by the unsuccessful parties rather than any exact measure of the actual costs to the successful litigant”: *Boucher v. Public Accountants Council for the Province of Ontario* (2004), 71 O.R. (3d) 291 (C.A.) (“*Boucher*”), at para. 24.
- [18] The Plaintiff/Responding Party was entirely successful on the motion and is presumptively entitled to his costs.
- [19] The motion was critically important to the Plaintiff/Responding Party. He was owed over \$400,000, including considerable amounts spent on improving the property. It was important for the Plaintiff/Responding Party to defend his investment of time, effort and money.
- [20] I find that the rates claimed for counsel for the Plaintiff/Responding Party are reasonable, considering his years of experience. I similarly find the disbursements claimed by the Plaintiff/Responding Party were properly incurred.

Conclusion

- [21] For these reasons, the Plaintiff/Responding Party is entitled to costs on a substantial indemnity basis. In all the circumstances and having regard to the principles enunciated in *Boucher* and the factors listed in r. 57.01 of the *Rules of Civil Procedure*, I find that the fees and disbursements claimed by the Plaintiff/Responding Party on the present motion are fair and reasonable. Costs are to be paid by the Defendant/Moving Party, Eric Manirambona in the total amount of \$28,000.00, inclusive of disbursements and taxes, forthwith.

Mr. Justice Brian Holowka

Released: February 13, 2025

CITATION: Gupta v. Manirambona, 2025 ONSC 1008
COURT FILE NO.: CV-22-86
DATE: 20250213

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

PAWAN GUPTA

Plaintiff/Responding Party

– and –

ERIC MANIRAMBONA AND URAL LINK LTD.

Defendant/Moving Party

REASONS FOR DECISION ON COSTS

Justice Holowka

Released: February 13, 2025