

CITATION: Peninsula Employment v. Castillo, 2025 ONSC 2158
COURT FILE NO.: CV-24-00723309-0000
DATE: 20250407

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: PENINSULA EMPLOYMENT SERVICES LTD., Plaintiff

– and –

MARC CASTILLO, CASTILLO HR CONSULTING INC., BORDERWORX LOGISTICS INC., SMART INFORMATION TECHNOLOGIES LTD., CREATIVE MINDS CHILDREN SERVICES INC., ANITA CRAWFORD, ERIKA SACLAYAN, NIKKI MATHEWS, Defendants

BEFORE: Justice E.M. Morgan

COUNSEL: *Kate Findlay and Lawrence Veregin*, for the Plaintiff

Hailey Bruckner and Ryan Shah, for the Defendants, Marc Castillo and Castillo HR Consulting Inc.

HEARD: Cost submissions in writing

COSTS ENDORSEMENT

[1] On February 24, 2025, I stayed this action as a result of the Plaintiff’s failure to promptly disclose a settlement with certain of the Defendants, despite their obligation under *Handley Estate v. DTE Industries Limited*, 2018 ONCA 324 to do so: *Peninsula Employment v. Castillo*, 2025 ONSC 1121 (“*Peninsula*”). The successful Defendants, Marc Castillo and Castillo HR Consulting Inc. (“Castillo”), now seek costs.

[2] This case began on July 4, 2024 with the Plaintiff obtaining an Anton Piller Order issued by Justice Brownstone on an *ex parte* basis. The Order was executed on Castillo in British Columbia, compelling Castillo to retain B.C. counsel to respond to that process.

[3] In her Order, Justice Brownstone appointed the firm Cassels Brock & Blackwell LLP as Independent Supervising Solicitor (“ISS”) to monitor and administer the seizure of evidence from Castillo. She also required the parties to return to her to confirm the Anton Pillar Order, and that “Comeback Order” was granted by Brownstone J. on September 23, 2024.

[4] Castillo seeks costs in the total amount of \$201,398.29. That represents costs associated with the Anton Pillar and Comeback Order, costs associated with enforcement of the Anton Pillar Order, and costs on a substantial indemnity scale of the motion before me. I observe that the motion before me includes the stay motion as well as the alternative relief sought of more extensive disclosure from the ISS of matters seized pursuant to the Anton Pillar Order.

[5] At the September 23, 2024 Comeback motion, the parties consented to the Order ultimately issued by Justice Brownstone. The Comeback Order specifically states that the parties are to “bear their own costs” associated with it. By definition, that entails the costs of the Anton Pillar motion that preceded the Comeback Order and that the Comeback Order confirmed, along with the costs associated with preparation for and attendance at the Comeback Motion. I am not inclined to re-assess the costs Order already decided by Justice Brownstone. The considerations that she would have taken into account have not changed as a result of developments leading to the stay that only occurred subsequent to the events that were before her.

[6] As for the motion heard by me, only half of that motion was devoted to the stay of proceedings. The other half was devoted to arguments for further disclosure from the ISS. That half of the motion did not have to be decided at all since it was presented as an alternative to the stay motion. However, since the issue involved a somewhat novel and very contemporary aspect of disclosure of digital material, I felt it was worth exploring in some brief reasons.

[7] In the course of those reasons, I indicated that had the stay not been granted I would have granted some, but not all, of the relief sought by Castillo. That relief would not have been aimed at the Plaintiff, but rather would have been aimed at the ISS, an independent, non-partisan officer of the court. In my view, it would not be appropriate to impose any cost burden on either the Plaintiff or the ISS in respect of an issue which, although interesting for the sake of discussion, was in reality moot by the time I turned to address it.

[8] Castillo’s Bill of Costs contains, among other things, the time involved in preparing a discovery plan. Plaintiff’s counsel point out that seeking costs of a discovery plan seems a bit rich under the circumstances, considering that the Castillo parties had never pleaded in their own defense. Those costs may have been incurred as a form of long-term preparation for the action, but they are not recoverable at this stage.

[9] Finally, Plaintiff’s counsel point out that on a stay motion for non-disclosure of a settlement, substantial indemnity costs are not the presumptive norm; rather, partial indemnity costs are the norm: *Crestwood Preparatory College Inc. v. Smith*, 2021 ONSC 8444, at para. 9. A “sanction has already been imposed for the failure to immediately disclose the settlement agreements, i.e. a permanent stay of proceedings: *Ibid.*, at para. 10. Moreover, at para. 9 of *Peninsula*, I explained that although the Plaintiffs erred in not advising Castillo immediately of the settlement with other Defendants, there was no “malintent on the Plaintiff’s behalf”. I see no cause here to impose costs on a substantial indemnity scale.

[10] Costs are always discretionary under section 131 of the *Courts of Justice Act*. In the present circumstances, I am prepared to award Castillo costs on a partial indemnity scale of half the motion heard by me – i.e. the stay half, not the further production half. I would not impose any costs in respect of the Anton Pillar Order, except to factor into the calculation the cost to Castillo of having one B.C. lawyer attend at the execution of the Anton Pillar Order. From that, I would subtract the cost of preparing a discovery plan.

[11] Using round figures and estimating the costs of portions of the work outlined in the Bill of Costs, the Plaintiff shall pay Castillo costs in the total amount of \$45,000, inclusive of all fees, disbursements, and HST.

Date: April 7, 2025

Morgan J.