

CITATION: Home Coffee Solutions Ltd. v. Amarshi, 2024 ONSC 251
COURT FILE NO.: CV-23-00699415-0000
DATE: 20240112

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: HOME COFFEE SOLUTIONS LTD. and 2079162 ONTARIO LTD., Plaintiff

– and –

MUHAMMAD ABBAS AMARSHI, MURTAZA SHABBIR KANJI, 14
MANAGEMENT INC., 2822514 ONTARIO INC. c.o.b. AS THE KITCHEN
BARISTA & GIFTS, ERIC JOHN YOHANNAN, MIQDAAD KHIMJI,
AZAMAT NOGOEV and ISMAT RHEMTULLA, Defendants

BEFORE: Justice E.M. Morgan

COUNSEL: *Benjamin Salsberg*, for the Plaintiffs

Allison Speigel, for the Defendants

HEARD: Cost submissions in writing

COSTS ENDORSEMENT

[1] The Plaintiffs brought a motion for an injunction and lost. The Defendants deserve costs.

[2] Counsel for both sides have submitted costs outlines. Defendants' counsel seeks fees of \$161,138.07 on a substantial indemnity basis or \$107,425.37 on a partial indemnity basis (plus disbursements of \$14,827.68). Plaintiffs' counsel would have sought fees of \$121,473.77 on a substantial indemnity basis or \$106,951.01 on a partial indemnity basis (plus disbursements of \$65,457.41).

[3] In other words, the parties' lawyers are not far apart in terms of the time and expense of the motion. Comparing the two partial indemnity requests, the successful Defendants seek a total costs award of \$121,882.78, while the unsuccessful Plaintiffs would seek a total costs award of \$172,408.42.

[4] The motion was hard fought by both sides; each approached the matter in a proper, if vigorous adversarial way. I see no reason for elevating the costs award to a substantial indemnity basis. The injunction motion was important to each of the parties, and the lawyers invested the time and effort they deemed necessary.

[5] That said, Plaintiffs' counsel submits that the Defendants' costs are excessive. He argues that they should be substantially reduced, suggesting that \$40,000 to \$50,000 (plus H.S.T.) would be a suitable range for a costs award on this motion. Citing *Boucher v. Public Accountants Council for the Province of Ontario*, 2004 CanLII 14579 (Ont CA), Plaintiffs' counsel submits:

The costs system is incorporated in the Rules of Civil Procedure, which exist to facilitate access to justice. There are obviously cases where the prospect of an award of costs against the losing party will operate as a reality check for the litigant and assist in discouraging frivolous and unnecessary litigation. However, the chilling effect of a costs award should not exceed or override any fair and reasonable expectation of the unsuccessful party.

[6] In reading this submission, I felt compelled to go back over the Plaintiffs' costs outline to ensure that I had not missed something. While I agree that Rule 57.01(1)(0.b) provides that a costs award should not exceed the reasonable expectations of the paying party, those expectations are typically measured by comparing the award with the paying party's own request.

[7] What is "fair and reasonable" for the purposes of fixing costs is an objective standard, the best evidence of which is the opposing side's bill: *Halton (Regional Municipality) v. Ohashi*, 2021 ONSC 8399, at para. 15. For that reason, the Court of Appeal has admonished that although "there is no requirement for the losing party, who is not seeking costs, to file a bill of costs although it is preferable that he or she does so": *Smith Estate v. Rotstein* (2011), 106 OR (3d) 161, at para. 50.

[8] In the case at bar, the unsuccessful Plaintiffs' costs were higher than those of the successful Defendants. And while it is possible that the Plaintiffs felt that the advantage to be gained through an injunction was worth more to them than was the disadvantage of an injunction to the Defendants, this version of "reasonableness" is nevertheless strikingly blind to the opposing side's position.

[9] In effect, the Plaintiffs say that the target of a business-ending injunction should spend less than half in defending itself than what the moving party spent in attempting to shut the responding party down. The Defendants are also saying that it was beyond their expectations that the opposing side would spend almost, but not quite, what they themselves spent on the motion. It is hard to understand where this expectation came from.

[10] I do not accept the Plaintiffs' version of "reasonable expectations." That phrase implies the commonsense notion that "since [they] dished it out [they] had to be able to take it": *Toronto (City) v. CUPE, Local 416*, 2009 CarswellOnt 4556, at para. 16.

[11] Rounding the figures off for the sake of convenience, the Plaintiffs shall pay the Defendants \$120,000.00, inclusive of all disbursements and HST.

Date: January 12, 2024

Morgan J.