CITATION: Rebello v. Del Property Management, 2024 ONSC 1494
COURT FILE NO.: CV-18-00607758-0000
DATE: 2024-03-13

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: TANYA REBELLO, plaintiff

AND:

DEL PROPERTY MANAGEMENT et al, defendants

BEFORE: ASSOCIATE JUSTICE R. FRANK

COUNSEL: Eric Turkienicz and Winona Fitch for the defendants Paragon Security, Sam Reza, and Ronald Crabb

Tanya Rebello, self-represented plaintiff

HEARD: In-writing

COSTS ENDORSEMENT

[1] The defendants Paragon Security, Sam Reza, and Ronald Crabb (the "Paragon Defendants") brought a motion for an order dismissing this action as against them (the "Dismissal Motion") on the basis that the plaintiff was in default of (i) a security for costs order dated April 27, 2020, and (ii) various costs orders in this action (the "Costs Orders"). I heard the Dismissal Motion and the plaintiff's cross-motion (the "Cross-motion") on December 6, 2023. On January 25, 2024 I released my Reasons for Decision granting the Dismissal Motion, dismissing the Cross-motion, and dismissing the action as against the Paragon Defendants.[1] In accordance with my Reasons for Decision, the Paragon Defendants delivered written costs submissions on February 8, 2024, and the plaintiff delivered responding costs submissions on February 21, 2024.

I. *The Parties submissions*

[2] The Paragon Defendants seek their costs of the Dismissal Motion, the Cross-motion and the remaining costs of the action. The Paragon Defendants' submissions include the following:

- The plaintiff claimed in excess of $45 million in damages in the action and recovered nothing from the Paragon Defendants.

[1] *Rebello v. Del Property Management et al*, 2024 ONSC 573

- The plaintiff's conduct delayed the hearing of the motion, complicated the motion through peripheral and meritless objections, and increased the costs of the motion.

- The plaintiff's Cross-motion was aimed at obstructing the timely hearing of the Dismissal Motion.

- The plaintiff abused her self-represented status and engaged in concerted efforts to attack, impugn, and disparage counsel.

- Although the plaintiff's July 12, 2023 request for an adjournment was granted, the plaintiff failed to comply with the terms of the adjournment.

[3] With respect to the scale of costs, the Paragon Defendants submit that costs should be fixed on a substantial indemnity basis. In support of this submission, they rely on *Teplitsky Colson LLP et al. v. William Malamas et al*, 2012 ONSC 5131(CanLII) ("*Mamalas*"). The Paragon Defendants argue that, as was the case in *Mamalas*, the plaintiff in this action conducted herself in a vexatious manner. They also submit that although numerous costs awards have been made against the plaintiff, including costs awards on a substantial indemnity basis, the plaintiff continues to conduct herself abusively and in disregard for court procedures and orders.

[4] The Paragon Defendants submitted a Bill of Costs and are seeking costs in the aggregate amount of $17,094.98 on a substantial indemnity basis, or alternatively $13,235.37 on a partial indemnity basis. There were no invoices or dockets included with the Bill of Costs.

[5] The plaintiff's responding costs submissions include the following:

- The action raised extremely important issues, including claims of conspiracy, bullying, harassment and stalking with respect to which the plaintiff claims to have substantial evidence. The plaintiff's claim continues as against the remaining defendants.

- Although the Paragon Defendants complain about the plaintiff's conduct, it is the Paragon Defendants who failed to comply with the *Rules of Civil Procedure*, including by improperly scheduling the Dismissal Motion. This necessitated a case conference and two adjournments of the motion. As well, the Paragon Defendants acted improperly with respect to the plaintiff's cross-examinations on the affidavits filed in support of the Dismissal Motion.

- The Paragon Defendants served a Bill of Costs without providing any docket entries to support the time claimed, as required by Form 57(A).

- The Paragon Defendants failed to serve a Bill of Costs and docket entries with respect to any of the existing Costs Orders. Had the Paragon Defendants done so, the plaintiff would have made arrangements to make payment of the Costs Orders.

- It is unreasonable for the defendants to seek recovery of fees for work undertaken by four lawyers given that the plaintiff is self-represented.

- The Paragon Defendants are not entitled to any costs. Alternatively, the fees claimed are excessive and should be no more than $500 in total for the Dismissal Motion and the action, which is all the plaintiff can afford to pay.

- The costs order should not depart from the general rule of partial indemnity costs.

II. *Analysis – fixing of costs for the Dismissal Motion, Cross-motion and action*

[6] As a preliminary matter, the plaintiff submits that costs should be assessed by an assessment officer. I do not accept this submission. As I held in my January 25, 2024 Reasons for Decision, this is not an exceptional case that requires an assessment of costs under Rule 58. Rather, I am fixing the costs of the Dismissal Motion, Cross-motion and action pursuant to Rule 57, and in doing so I have considered the factors under Rule 57.01(1).

(i) Importance of the issues

[7] Both parties submit that the Dismissal Motion raised important issues. It is evident that a motion to dismiss an action is important to the parties. Further, the amount claimed in the action was in excess of $45 million, and the Paragon Defendants obtained a dismissal of the action as against them. I do not consider the continuation of the action as against the other defendants relevant to the determination of the costs claimed by the Paragon Defendants.

(ii) Conduct of the parties and complexity of the motions

[8] The plaintiff's response to the Dismissal Motion and Cross-motion lengthened the hearing and increased its complexity. As detailed in my January 25, 2024 Reasons for Decision, the plaintiff was entirely unsuccessful with respect to the myriad of preliminary issues raised in the Cross-motion. The plaintiff's conduct led to increased costs of the motions.

[9] I do not accept the plaintiff's submission that the Paragon Defendants acted improperly with respect to the Dismissal Motion. Although the first adjournment of the Dismissal Motion resulted from the fact that it was scheduled for an in-person hearing without the plaintiff's consent, I do not consider that to have had a material impact on the progress of the motion or the costs relating to the Dismissal Motion. However, in the circumstances, the Paragon Defendants should not be awarded any costs for work relating to the first adjournment, and I have deducted the fees claimed for that work from the costs I am fixing.

[10] I also do not accept the plaintiff's submission that the Paragon Defendants acted improperly in respect of the cross-examinations, including by refusing to provide docket entries with respect to the costs that were ordered to paid pursuant to the existing Costs Orders. The plaintiff's cross-examinations sought information that was not relevant to the issues on the motions because the costs payable under the Costs Orders had already been fixed.

(iii) Quantum

[11] The plaintiff submits that only nominal costs should be awarded for various reasons. As noted, she submits that any costs award should be limited because the Paragon Defendants failed to include their dockets in support of the amounts claimed in their Bill of Costs.

[12] A party seeking costs must present relevant and sufficient information to support the costs claimed. Dockets and other supporting information may be required, particularly for fixing large bills. The Court of Appeal has explained the obligation as follows:

> [66] The party seeking costs bears the burden of proving them to be reasonable, fair, and proportionate. The absence of dockets is not an automatic bar to proving or receiving an award of costs: *Leonard v. Zychowicz*, 2022 ONCA 212, at para. 33. However, absent dockets, a description of the activities for which fees and disbursements are claimed must be sufficient to permit for the kind of close scrutiny that the court is required to undertake. The material provided for the assessment must allow the court to come to a conclusion as to the amount of time reasonably required by the party seeking costs to deal with all aspects of the proceedings for which costs are claimed, including whether there was over-lawyering or unnecessary duplication of legal work: *Restoule*, at para. 355. Bald statements do not assist the court with this task but give rise to the kind of mechanical calculation of hours times rates that this court cautioned against in *Boucher*, at para. 26, and in *McNaughton Automotive Limited v. Co-operators General Insurance Co.*, 2009 ONCA 598, 255 O.A.C. 362, at para. 17.[2]

[13] In the present case, the activities with respect to the Dismissal Motion and Cross-motion included drafting motion materials, conducting research, drafting factums, reviewing responding materials, and preparing for and attending at cross-examinations and hearings. The activities with respect to the action included reviewing and drafting pleadings, reviewing client documents, formulating opinions, and communicating with the client, the co-defendants and the plaintiff. In the circumstances, I find that the description in the Bill of Costs of the activities for which fees and disbursements are claimed is sufficient to allow me to assess whether the time spent was reasonably required and whether there was over-lawyering or unnecessary duplication of legal work. Based on the materials filed, the oral hearings before me, and the written submissions received, I find that the time spent was reasonably required. The only exception is the work relating to the first adjournment, with respect to which I am not awarding any costs for the reasons outlined above. Further, I do not consider that the involvement of four lawyers in total on this matter to be excessive. The bulk of the work was undertaken by one lawyer with appropriate experience, with other work appropriately undertaken or delegated. The hourly rates claimed are reasonable. In my view, the overall quantum claimed in the Bill of Costs is conservative and on the lower end of what would be expected for proceedings such as these.

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[2] *Apotex Inc. v. Eli Lilly Canada Inc.*, 2022 ONCA 587 at para 66

(iv) Scale of costs

[14] I find that the plaintiff's response to the Dismissal Motion and her Cross-motion were aimed at obstructing the timely hearing of the Dismissal Motion and resulted in significant work by the Paragon Defendants that should not have been necessary.[3] Further, reasonable accommodation of the plaintiff's self-represented status does not provide her with license to unilaterally determine court process, ignore orders of the court, or act abusively toward counsel. While the plaintiff was entitled to seek an adjournment of the Dismissal Motion, her conduct with respect to scheduling the new hearing date for Dismissal Motion and Cross-motion was entirely unreasonable and uncooperative. Contrary to my scheduling order, she failed to appear at the virtual hearing with a functioning camera. She also failed to file a compendium and refused the offer from counsel for the Paragon Defendants to assist in that regard. Instead, the plaintiff made continued, meritless accusations of misconduct against counsel for the Paragon Defendants.

[15] In the result, I find that the plaintiff's conduct warrants an award of substantial indemnity costs against her.[4]

(v) Conclusion on costs

[16] In exercising its discretion to fix costs under Rule 57.01(1), the overall goal of the Court is to "fix an amount that is fair and reasonable for the unsuccessful party to pay in the particular proceeding, rather than an amount fixed by the actual costs incurred by the successful litigant."[5]

[17] I have reviewed the costs outlines and costs submissions from each party. In addition, I am guided by the factors set out in Rule 57.01(1) when awarding costs, including the amount of costs that an unsuccessful party could reasonably have expected to pay. Based on the parties' costs submission and considering all the relevant factors, I find that it is fair and reasonable in the circumstances for the plaintiff to pay the Paragon Defendants costs on a substantial indemnity basis fixed in the amount of $16,470.23, inclusive of disbursements and taxes. This is the amount claimed by the Paragon Defendants on a substantial indemnity basis less $624.75, the substantial indemnity costs claimed for work relating to the first adjournment.

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[3] See *Mamalas* at para 2

[4] In finding that costs should be awarded on a substantial indemnity basis, I do not accept or rely on the Paragon Defendants' submission that the plaintiff's conduct in other actions supports a finding that costs should be awarded on an elevated scale for the Dismissal Motion, the Cross-motion and the action.

[5] *Boucher v Public Accountants Council for the Province of Ontario*, 71 OR (3d) 291 (CA) at para 26

DISPOSITION

[18] For the reasons outlined above, I order the plaintiff to pay the Paragon Defendants costs fixed in the amount of $16,470.23 inclusive of disbursements and taxes within 30 days.

DATE: March 13, 2024

R. Frank Associate J.