

CITATION: Hordo v. State Farm Mutual Automobile Insurance Company, 2023 ONSC 6879
COURT FILE NO.: CV-14-518093
DATE: 20231205

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: DIANA MICHELLE DANIELLA HORDO, Plaintiff

AND:

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,
Defendant

BEFORE: VERMETTE J.

COUNSEL: *Diana Michelle Daniella Hordo*, self-represented

Darrell P. March, for the Defendant

HEARD: In writing

ENDORSEMENT AS TO COSTS

[1] On June 5, 2023, I released an endorsement (2023 ONSC 3383) dismissing the action after the Plaintiff failed to attend an examination for discovery by September 30, 2022, as ordered in my endorsement dated June 20, 2022 (2022 ONSC 3678).

[2] The parties were not able to agree on costs and have delivered costs submissions.

[3] This Endorsement as to Costs relates to the costs of the motion decided on June 5, 2023 (“**June 5, 2023 Motion**”) and the costs of the action, excluding the costs of prior motions and appeals.

POSITIONS OF THE PARTIES

a. Position of the Defendant

[4] The Defendant seeks its costs of the action on a substantial indemnity basis. It states that the Plaintiff commenced the action and then failed to participate in the litigation process, using delay tactics and frivolous actions to cause the Defendant to incur significant costs in defending this matter and in ultimately having it dismissed. The Defendant also states that the Plaintiff has continuously disregarded Court orders and directions resulting in a substantial delay in this action and significant costs to the Defendant.

[5] The Defendant submits that an award of costs on a substantial indemnity basis is also supported by the fact that the Plaintiff has advanced serious allegations as against the Defendant, its counsel and non-parties to the litigation.

[6] The Defendant's bill of costs reflects costs on a substantial indemnity basis in the amount of \$62,820.15. The amount on a partial indemnity basis is \$41,879.86.

b. Position of the Plaintiff

[7] For the most part, the Plaintiff's costs submissions are not submissions on costs.

[8] Among other things, the Plaintiff repeats her allegation that the law firm Beard Winter LLP does not represent, and has never represented, the Defendant. She argues that Beard Winter LLP was hired by and represents Certas Home and Automobile Insurance Company, and she states that she has no relationship whatsoever with Certas Home and Automobile Insurance Company. The Plaintiff further argues that Beard Winter LLP's alleged representation of the Defendant is fraudulent.

[9] The Plaintiff states that "[f]raud is and was pleaded and proven throughout with document evidence". She also states that the Defendant "is barred before the Court for failure to pay Statutory Accident Benefits, required in law".

[10] The Plaintiff refers to her application for leave to appeal to the Supreme Court of Canada, but that application was dismissed on July 27, 2023. The Plaintiff apparently filed a motion for reconsideration in August 2023.

[11] The Plaintiff also informs the Court that she has submitted a complaint against me to the Canadian Judicial Council, and she attaches a copy of her complaint to her submissions. I have not been contacted by the Canadian Judicial Council regarding any complaint filed against me by the Plaintiff.¹

¹ I note that the mere making of a complaint to the Canadian Judicial Council, by itself, does not amount to cogent evidence sufficient to displace the presumption of impartiality: see *Aganeh v. Aganeh*, 2017 ONSC 5733 at para. 36. In *Doncaster v. Chignecto-Central Regional School Board*, 2013 NSCA 59 at para. 13, the Nova Scotia Court of Appeal stated the following on this issue:

Obviously the mere filing of a complaint with the Canadian Judicial Council does not pull the trigger for recusal. If that were the case, one could simply file a complaint and "pick off" a judge, one by one until the complainant either found one to his liking ("judge shopping") or there were no judges left to hear the case. Such a result is neither the law nor in the public interest.

[12] The Plaintiff concludes her submissions as follows:

Based on the foregoing, the Plaintiff submits that these are appropriate circumstances to deny cost awards to the Defendant and awards [sic] cost to the Plaintiff, payable forthwith.

[13] The Plaintiff's Costs Outline is attached to her submissions. In it, she claims costs in the amount of more than \$515 million. These "costs" include insurance benefits that the Plaintiff alleges should have been paid to her, damages for breach of fiduciary duty and punitive damages, as well as costs related to various appeals related to my decisions in this case and costs for the preparation of her complaint against me to the Canadian Judicial Council.

DISCUSSION

a. Entitlement to costs

[14] The Defendant was successful on the motion and action. There are no factors in this case that militate against the general principle that costs should follow the event. The points raised by the Plaintiff are irrelevant and/or have already been rejected in this proceeding.

b. Scale of costs

[15] As has been observed in many cases, costs on an elevated scale are exceptional and are reserved for those situations when a party has displayed reprehensible, scandalous or outrageous conduct: see *Quickie Convenience Stores Corp. v. Parkland Fuel Corporation*, 2021 ONCA 287 at para. 4.

[16] In my view, substantial indemnity costs are warranted with respect to the June 5, 2023 Motion. As she did in previous motions, the Plaintiff filed voluminous responding materials that were largely irrelevant to the issues raised on the motion and that did not comply with the orders and directions that I had previously given. In addition, the Plaintiff's materials contained disparaging and vexatious statements and serious allegations – notably allegations of criminal conduct – against various people, including her former lawyer of record and the Defendant's lawyers.

[17] Among other things, I rely on the following statement of the Court of Appeal in *Unisys Canada Inc. v. York Three Associates Inc.*, 2001 CanLII 7276 at para. 15 (Ont. C.A.):

See also *Jayaraj v. Metcap Living Management Inc.*, 2021 ONSC 503 at para. 9, and *R. v. J.L.A.*, 2009 ABCA 344 at para. 30. Thus, no inference is drawn that a judicial officer will treat a litigant unfairly or in a biased manner because the litigant has objected to the judicial officer's conduct: see *Peoples Trust Company v. Atas*, 2018 ONSC 58 at para. 172

On the issue of costs we agree with the respondent that the appellant's conduct in making unsubstantiated allegations of fraud, misconduct, or dishonesty, (or other conduct analogous to the foregoing), is sufficiently reprehensible to warrant awarding solicitor-and-client costs in favour of the aggrieved party [citations omitted]. Conduct of this nature is particularly blameworthy when aimed at the integrity of a lawyer [citation omitted].

[18] I also find that the Plaintiff's conduct has unnecessarily lengthened the proceeding (Rule 57.01(1)(e)) and that her response to the June 5, 2023 Motion was improper, vexatious and unnecessary (Rule 57.01(1)(f)). As pointed out in my reasons (at para. 22), the evidence filed by the Plaintiff on the June 5, 2023 Motion does not provide any valid explanation or justification for her failure to produce documents relevant to the litigation, respond to the Defendant's requests to schedule an examination for discovery and attend the court-ordered examination for discovery.

[19] While I have ordered costs on a substantial indemnity basis with respect to the June 5, 2023 Motion and other motions in this case, this does not mean that elevated costs are justified for the entire proceeding. The allegations contained in the Amended Statement of Claim do not, by themselves, support an award of costs on a substantial indemnity basis.

[20] In my view, the Plaintiff has displayed reprehensible conduct in the litigation on a continuing basis since August 2021, i.e., at around the time that the motion of the Plaintiff's former lawyer to be removed from the record was scheduled and heard. I find that costs on a substantial indemnity basis are appropriate for the period August 2021 to today. I do not have a sufficient basis to order costs on an elevated scale for the period preceding August 2021.

[21] Unfortunately, the Defendant's bill of costs does not indicate when the time of the various lawyers was spent. However, given my knowledge of the litigation as case management judge, I can make an informed estimate of the time spent before and after August 2021.

[22] As a result of my finding that substantial indemnity costs are appropriate for the June 5, 2023 Motion and for the steps in the action taken in and after August 2021, and after reviewing the Defendant's bill of costs, I conclude that the Defendant's claim for costs on a substantial indemnity basis is approximately \$30,500 (including HST) and that its claim for costs on a partial indemnity basis is approximately \$20,300 (including HST), plus disbursements in the amount of \$2,904.61. The total amount claimed is \$53,704.61.

c. Quantum

[23] The Plaintiff did not make any submissions regarding the quantum of costs sought by the Defendant.

[24] The hourly rates used in the bill of costs for the Defendant's lawyers are reasonable and appropriate. However, the bill of costs includes numerous timekeepers. In my view, it is necessary to apply a reduction to the amount sought to take into account potential duplication of work between the timekeepers involved and to ensure that the overall time claimed is reasonable in light of all the circumstances of this case.

CONCLUSION

[25] Taking the foregoing into account, as well as the factors set out in Rule 57.01(1) of the *Rules of Civil Procedure* and the reasonable expectations of the parties, I find that the fair and reasonable award of costs in favour of the Defendant is in the all-inclusive amount of \$47,000.00. In my view, this is an amount that the Plaintiff should reasonably have expected to pay in the event that she was unsuccessful on the June 5, 2023 Motion and the action. The costs are to be paid by the Plaintiff to the Defendant within 30 days.

Vermette J.

Date: December 5, 2023