

CITATION: 9695672 Canada Inc. o/a Vector v. Fundstream et al., 2024 ONSC 2937
COURT FILE NO.: CV-22-964
DATE: 2024-05-28

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:)	
)	
<u>9695672 Canada Inc. o/a VECTOR GIFT CARDS AND MARKETING AGENCY</u>)	Richard Campbell, Counsel for the
Plaintiff)	Responding Plaintiff
)	
- and -)	
)	
<u>FUNDSTREAM INC.</u> and ROYAL BANK)	Alexander Bissonnette, Counsel for the
OF CANADA)	Moving Defendant, Fundstream
Defendants)	(RBC Not Participating in Motion)
)	
)	HEARD: In Writing
<u>The Honourable Justice C.D. Braid</u>)	

2024 ONSC 2937 (CanLII)

COSTS ENDORSEMENT

I. OVERVIEW

[1] 9695672 Canada Inc., operating as Vector Gift Cards and Marketing Agency (“Vector”), is a corporation that sources discount gift cards from merchants. Vector then sells those gift cards to clients for use in promotional programs by end users who may redeem the cards at their face value.

[2] Fundstream Inc. (“Fundstream”) is a corporation that also engages, in part, in the business of gift card sourcing and distribution.

[3] Vector sued Fundstream and the Royal Bank of Canada (“RBC”), making various claims including conspiracy and false representation. Vector claimed that Fundstream used Vector’s confidential information to divert business away from Vector and increase business given to Fundstream by RBC.

[4] Fundstream brought a motion to strike portions of Vector's claim. In reasons cited at *9695672 Canada Inc. o/a Vector v. Fundstream et al.*, 2023 ONSC 5464, the motion was dismissed.

[5] I must now determine costs of the motion. For the reasons that follow, I find that a fair and reasonable award of costs on the motion, payable by Fundstream to Vector, is \$7,000.

II. ANALYSIS

[6] Vector seeks substantial indemnity costs of \$12,565.60. Fundstream's counsel submits that the costs claimed are excessive, and that costs should only be awarded on a partial indemnity basis. Fundstream's counsel states that its own fees on the motion were \$5,594.63 on a full indemnity basis.

[7] Vector was entirely successful on the motion and is entitled to costs. In determining quantum, the court is to consider the factors set out in Rule 57.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as well as s. 131 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. Those factors include the principle of indemnity, the reasonable expectations of the parties, the complexity of the proceeding, the importance of the proceeding, and the conduct of the parties in litigation. I have considered these factors.

[8] I have also considered the principles in *Boucher v. Public Accountants Council for the Province of Ontario* (2004), 71 O.R. (3d) 291 (C.A.), at para. 24. The fixing of costs should reflect what the court views as a fair and reasonable amount to be paid, rather than any exact measure of the actual costs to the successful litigant.

[9] The parties filed motion records, affidavits, factums and books of authorities. Although this motion was on a regular motions list, the issues were somewhat complex and required detailed factums and books of authorities. In addition, despite the fact that the motion was of high importance to the parties, it would not be appropriate to award costs on a substantial indemnity basis in the absence of any evidence to

substantiate the claim. The two most important factors are the principle of indemnity and the amount of costs that the unsuccessful party could reasonably have expected to pay in the event they were unsuccessful.

[10] I find that a fair and reasonable award of costs for this motion is \$7,000.

III. NOTE RE COSTS OUTLINES

[11] Counsel for both parties submitted Costs Outlines that included the usual chart with “Fee Items” in the left column (an explanation of categories of work completed). The charts set out the “Persons” who did the work and the “Hours” spent. In the last two columns where counsel ordinarily calculate fees, counsel simply repeated their hourly rate for every fee item, regardless of the hours spent. For example, one counsel’s actual hourly rate is \$500, and that number was repeated all the way down the column under actual rate, regardless of how many hours were spent on that task.

[12] Ideally, when preparing a Costs Outline or Bill of Costs, counsel should include a list of hourly fees of each person who worked on the file. Below that list, counsel should insert the chart where they must “show the math” by multiplying the hours worked on each fee item by the lawyer/law clerk’s hourly rate and displaying those calculations in the final two columns. There should be totals at the bottom of these columns. If the party is claiming substantial indemnity fees, the total at the bottom of the column for substantial indemnity fees should match the fees claimed on the first page of the Costs Outline.

[13] In this case, I wrote to counsel to request that they amend and re-submit their Costs Outline. Unfortunately, I may not have articulated the issue well, as counsel did not understand my concerns. I hope that this explanation will assist counsel in preparing future Costs Outlines.

IV. CONCLUSION

[14] For all of these reasons, this court orders that the defendant, Fundstream, shall pay costs to the plaintiff, Vector, in the amount of \$7,000, inclusive of HST and disbursements. These costs shall be paid by June 28, 2024.

Braid, J.

Released: May 28, 2024

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SUPERIOR COURT OF JUSTICE**

BETWEEN:

9695672 Canada Inc. o/a VECTOR GIFT CARDS
AND MARKETING AGENCY

Plaintiff

- and -

FUNDSTREAM INC. and ROYAL BANK OF
CANADA

Defendants

COSTS ENDORSEMENT

Released: May 28, 2024