

CITATION: Alamos Gold Inc. v. Sterling O&G International Corp., 2024 ONSC 2968
COURT FILE NO.: CV-10-400395
DATE: 20240524

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: ALAMOS GOLD INC., *Plaintiff*

- and -

STERLING O&G INTERNATIONAL CORPORATION, *Defendant*

AND RE: STERLING O&G INTERNATIONAL CORPORATION, *Plaintiff by counterclaim*

- and -

ALAMOS GOLD INC., 939610 ONTARIO LIMITED and DENIS FLAMAND, *Defendants by counterclaim*

BEFORE: Associate Justice Todd Robinson

PARTIES: G. Thawani, *representative of the defendant/plaintiff by counterclaim, Sterling O&G International Corporation*

COUNSEL: V. Toppings, *for the plaintiff/defendant by counterclaim, Alamos Gold Inc., and the defendant by counterclaim, Denis Flamand*

S. Hutt, *for the defendant by counterclaim, 939610 Ontario Limited*

HEARD: In writing

COSTS ENDORSEMENT

[1] This costs endorsement follows my decision on the successful motion by Sterling O&G International Corporation (“Sterling”) for leave to be represented by its sole director, officer, and shareholder, Govind Thawani. Sterling’s motion was opposed by Alamos Gold Inc. (“Alamos”) and Denis Flamand, with their opposition supported by 939610 Ontario Limited (“939 Ont”).

[2] Written costs submissions were exchanged, but my costs decision has been unfortunately delayed through no fault of the parties. I have now had an opportunity to review and consider the parties’ submissions.

Positions of the parties

[3] Based on Mr. Thawani's written submissions, Sterling appears to be seeking \$5 million in compensation for costs and delay in the proceeding. That figure is unsupported by any costs outline. Sterling's costs outline submitted after the motion hearing per my direction sought only \$5,749 in fees and disbursements.

[4] Alamos and Mr. Flamand submit that there should be no costs awarded or, alternatively, that costs should be fixed at \$1,500 for time incurred, plus disbursements for notarial and court filing fees upon Mr. Thawani presenting receipt for those disbursements. 939 Ont seeks \$1,000 in costs thrown away or, alternatively, an order that there be no costs awarded for the motion.

Analysis

[5] I have broad discretion in deciding costs by virtue of s. 131 of the *Courts of Justice Act*, RSO 1990, c. C.43 and rule 57.01 of the *Rules of Civil Procedure*, RRO 1990, Reg 194. The general principles applicable when determining costs are well settled. Costs are discretionary. Subrule 57.01(1) sets out a non-exhaustive list of factors to be considered by the court in exercising that discretion, which are in addition to considering the result of the proceeding and any written offers to settle. Rule 1.04(1.1), which is also applicable, requires the court to make orders that are proportionate to the importance and complexity of the issues and to the amount involved in the proceeding.

[6] Ultimately, costs awards are intended to reflect what the court views as a fair and reasonable amount that should be paid rather than any exact measure of actual costs: *Davies v. Clarington (Municipality)*, 2009 ONCA 722 at para. 52. The overall objective is fixing an amount that is fair and reasonable in the particular proceeding, having regard to the expectations of the parties concerning the quantum of costs: *Boucher v. Public Accountants Council for the Province of Ontario* (2004), 71 OR (3d) 291 (CA) at paras. 26 and 38.

[7] The crux of Mr. Thawani's submissions on behalf of Sterling is that opposition by the plaintiff and defendants by counterclaim has delayed prosecution of this action and that their materials and submissions were "baseless, [and] vexatious with intentions of causing irreparable harm." I have not been directed to anything specific in the materials or submissions supporting that allegation. Mr. Thawani takes the position that Sterling was entitled to the relief sought and the motion has resulted in nothing more than costs thrown away and a further delay in the action.

[8] I do not agree that the conduct of any of Alamos, Mr. Flamand, or 939 Ont in opposing this motion was "reprehensible, scandalous and outrageous" as alleged by Mr. Thawani. Although Sterling succeeded in obtaining leave for Mr. Thawani to represent it, that does not mean that the opposition mounted to this motion was without merit. In my view, the issues raised by Alamos and Mr. Flamand were legitimate concerns that provided a reasonable basis to oppose.

[9] There is simply no basis for a \$5 million award in favour of Sterling. I have accordingly only considered the costs outline filed for \$5,749 in costs, namely \$4,200 for time spent in preparing for the motion and \$1,279 in disbursements.

[10] I agree with Alamos and Mr. Flamand that I should be considering Sterling's costs claim in light of the case law on costs recovery by a self-represented litigant. No lawyer time is claimed by Sterling. The only time claimed is that of Mr. Thawani himself. Self-represented litigants are only entitled to a costs award upon demonstrating that they have incurred a lost opportunity cost by foregoing remunerative activity: *Girao v. Cunningham*, 2021 ONCA 18 at para 9; *Fong v. Chan*, 1999 CanLII 2052 (ONCA) at para 26. The Divisional Court has clearly stated that not even nominal costs are properly awarded in the absence of proof of an opportunity cost: *Mustang Investigations v. Ironside*, 2010 ONSC 3444 (Div Ct) at para. 27.

[11] Nothing before me supports that Mr. Thawani had to forego any remunerative activity in bringing forward this motion. In my view, the claimed 30 hours of time spent by Mr. Thawani has not been substantiated as being anything more than the time and effort that a litigant would have to devote to their case. Although that is sufficient to find that the claimed \$4,200 is not recoverable, I note also that the claimed rate of \$140 per hour has not been justified and I find no basis to accept it.

[12] Sterling claims disbursements for court filings (\$339), notary fees (\$400), travel from Manitoba to Toronto (\$360) and photocopying (\$180). The costs submissions support that requests were made for Mr. Thawani to provide documentation supporting the disbursements. However, none of them have been substantiated by receipts or other proof of payment, despite those requests. The need for travel to Toronto is particularly questionable, since the hearing took place virtually. In my view, the court filing fee for the motion is the only disbursement that does not require substantiation.

[13] Although not raised by Alamos and Mr. Flamand themselves, in 939 Ont's cost submissions, I have been directed to an offer to settle the costs of this motion made by Alamos shortly before the deadline for Sterling to serve its costs submissions. Specifically, Alamos offered to pay \$3,000 in costs, plus the notarial and court filing fees on presentation of receipts for those expenses. Mr. Thawani rejected the offer, advising Alamos' counsel that he would be seeking "retribution costs, along with punitive, examples [sic] and quantum." Alamos' offer was quite reasonable, particularly given the law with respect to costs of self-represented litigants.

[14] I have also considered 939 Ont's request for costs thrown away, which seems to be based on Sterling's non-compliance with court directions and timetable orders leading to the motion hearing. While I do not condone the non-compliance, I am not satisfied that it gives rise to an award of costs thrown away. I agree with 939 Ont that it did not file materials or make submissions in opposition to the motion. However, it elected to have counsel appear and its counsel advised me that 939 Ont supported the opposition by Alamos and Mr. Flamand to the motion. That opposition was unsuccessful.

Disposition on costs

[15] For the foregoing reasons, and having weighed the factors in subrule 57.01(1) and, in particular, Mr. Thawani's rejection of Alamos' very reasonable offer to settle costs, I find it fair and reasonable in the circumstances of this motion that the parties each bear their own costs. There shall accordingly be no costs awarded to any party from the motion.

Additional comments

[16] Mr. Thawani, on behalf of Sterling, has advanced numerous unsubstantiated allegations of improper conduct by Alamos, Mr. Flamand, and 939 Ont, and their counsel, in Sterling's costs outline. Having served a costs outline seeking \$5,749 in costs, Sterling's costs submissions nevertheless requested that I order the responding parties to pay \$5 million. I have serious concerns with Mr. Thawani taking these kind of positions on behalf of Sterling.

[17] Leave for Mr. Thawani to represent Sterling was heavily contested. After due consideration, I granted leave. Mr. Thawani's costs submissions are not, in my view, consistent with the capabilities that Mr. Thawani demonstrated in bringing and arguing the motion before me. If Mr. Thawani demonstrates that he is not, in fact, capable of representing the corporation, then leave may well be revoked. Unsubstantiated hyperbole and mudslinging will not advance Sterling's case and could well lead to such revocation. I caution Mr. Thawani that, moving forward, he should take greater care in preparing his materials to ensure that they are accurate, measured, and properly substantiated.

ASSOCIATE JUSTICE TODD ROBINSON

DATE: May 24, 2024