

**CITATION:** LivingArt Kitchens Inc. v. Merenich, 2024 ONSC 3640  
**COURT FILE NO.:** CV-23-00710992-0000  
**DATE:** 20240625

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

<b>BETWEEN:</b>	)	
	)	
<b>LIVINGART KITCHENS INC.</b>	)	
	)	<i>Sepideh Nassabi</i> for the Plaintiff
Plaintiff	)	
- and -	)	
	)	<i>Joseph Figliomeni</i> for the Defendants Boris
<b>ALEXANDER MERENICH, AM</b>	)	Sokolov, Zafar Sodikjonov also known as
<b>ALPHA CONSTRUCTION TRADE</b>	)	Zafarjon Sodikjonov, Irada Sodikjonova,
<b>INC., BORIS SOKOLOV, ZAFAR</b>	)	Rada Group Inc., and Zafar Sodikjonov also
<b>SODIKJONOV also known as</b>	)	known as Zafarjon Sodikjonov carrying on
<b>ZAFARJON SODIKJONOV, IRADA</b>	)	business as Global Development
<b>SODIKJONOVA, RADA GROUP INC.,</b>	)	
<b>ZAFAR SODIKJONOV also known as</b>	)	<i>Margarita Dvorkina</i> for the Defendants
<b>ZAFARJON SODIKJONOV</b>	)	Alexander Merenich and AM Alpha
<b>CARRYING ON BUSUINESS AS</b>	)	Construction Trade Inc.
<b>GLOBAL DEVELOPMENT</b>	)	
	)	<b>HEARD:</b> In writing
Defendants	)	
	)	

**PERELL, J.**

**REASONS FOR DECISION - COSTS**

[1] LivingArt Kitchens Inc. sues three former employees or independent contractors who departed LivingArt; namely: Zafar Sodikjonov, Alexander Merenich, and Boris Sokolov. It also sues Irada Sodikjonova, Zafar’s wife, and Rada Group Inc., which is Ms. Sodikjonova’s corporation. LivingArt also sues AM Alpha Construction Trade Inc., which is Mr. Merenich’s corporation.

[2] LivingArt brought a motion for an extraordinarily lengthy list of interlocutory injunctive relief. Its motion was dismissed.<sup>1</sup> The Defendants seek costs.

[3] The Defendants made a joint costs submission. The Defendants, Alexander Merenich and AM Alpha Construction Trade Inc. (collectively “Merenich”) seek their costs on a substantial indemnity basis, in the amount of **\$46,408.58**, all inclusive. The Defendant Boris Sokolov seeks his costs on a substantial indemnity basis, in the amount of **\$60,000**, all inclusive. The Defendants, Irada Sodikjonova, Zafar Sodikjonov, and Rada Group Inc. (collectively, the “Rada Group

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<sup>1</sup> *LivingArt Kitchens Inc. v. Merenich*, 2024 ONSC 3088.

Defendants”) seek their costs on a partial indemnity basis, in the amount of **\$120,000**, all inclusive. The aggregate claim for costs of the Defendants in their joint submission is **\$226,408.58**, all inclusive.

[4] LivingArt submits that because the Defendants did not submit any costs outlines before the argument of LivingArt’s motion, the Defendants should receive costs of **\$0.00**, all inclusive.

[5] In the alternative, LivingArt submits that if costs are payable, then on a partial-indemnity basis: (a) Merenich’s award should be **\$13,212.50**, all inclusive; (b) Sokolov’s award should be **\$16,852.50**, all inclusive; and (c) the Rada Group’s award should be **\$19,107.50**. Based on LivingArt’s submissions, the aggregate joint award to the Defendants would be **\$49,172.50**, all inclusive.

[6] For the reasons that follow, I award: (a) Merenich, severally, partial indemnity costs of **\$35,000**, all inclusive; (b) Sokolov and the Rada Group jointly partial indemnity costs of **\$135,000**, all inclusive. How the \$135,000 is to be apportioned severally is a matter to be resolved by Sokolov and the Rada Group. The aggregate joint award to the Defendants is **\$170,000**, all inclusive.

[7] The court’s discretion in awarding costs arises under the authority of s. 131 of the *Courts of Justice Act*<sup>2</sup> and is to be exercised by a consideration of the factors in rule 57.01(1) of the *Rules of Civil Procedure*.<sup>3</sup> The traditional discretionary principles developed for costs awards are codified in rule 57.01(1), which states:

*Factors in Discretion*

57.01 (1) In exercising its discretion under section 131 of the *Courts of Justice Act* to award costs, the court may consider, in addition to the result in the proceeding and any offer to settle or to contribute made in writing,

(0.a) the principle of indemnity, including, where applicable, the experience of the lawyer for the party entitled to the costs as well as the rates charged and the hours spent by that lawyer;

(0.b) the amount of costs that an unsuccessful party could reasonably expect to pay in relation to the step in the proceeding for which costs are being fixed;

(a) the amount claimed and the amount recovered in the proceeding;

(b) the apportionment of liability;

(c) the complexity of the proceeding;

(d) the importance of the issues;

(e) the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding;

(f) whether any step in the proceeding was,

(i) improper, vexatious or unnecessary, or

(ii) taken through negligence, mistake or excessive caution;

<sup>2</sup> R.S.O. 1990, c. C-43.

<sup>3</sup> R.R.O. 1990, Reg. 194.

- (g) a party's denial of or refusal to admit anything that should have been admitted;
- (h) whether it is appropriate to award any costs or more than one set of costs where a party,
  - (i) commenced separate proceedings for claims that should have been made in one proceeding, or
  - (ii) in defending a proceeding separated unnecessarily from another party in the same interest or defended by a different lawyer; and
- (i) any other matter relevant to the question of costs.

[8] The most general rule about costs, not to be departed from without good reason, is that costs at a partial indemnity scale follow the event, which is to say that normally costs are ordered to be paid by the unsuccessful party to the successful party on a partial indemnity scale.<sup>4</sup>

[9] A critical controlling principle for the awarding of costs is that the sum awarded reflect the fair and reasonable expectations of the unsuccessful litigant.<sup>5</sup> The overriding principle in awarding costs is reasonableness.<sup>6</sup>

[10] The assessment of reasonableness is discretionary and very much dependent upon the circumstances of each case. In some cases, it may be reasonable for the successful party to make exhaustive efforts and to commit enormous legal resources, and in those cases, it might be said that the unsuccessful party could reasonably expect to pay those costs. In other cases, however, the successful party may have been well served by giving his or her lawyer instructions to make exhaustive efforts, but it might be disproportionate and unreasonable to expect the unsuccessful party to pay those costs, even if he or she would have expected or anticipated that his or her foe would have marshalled those legal resources.<sup>7</sup>

[11] In *Davies v. Clarington (Municipality)*<sup>8</sup> at para. 52, Justice Epstein stated that the overriding principle in awarding costs is reasonableness. She stated:

52. As can be seen, the overriding principle is reasonableness. If the judge fails to consider the reasonableness of the costs award, then the result can be contrary to the fundamental objective of access to justice. Rather than engage in a purely mathematical exercise, the judge awarding costs should reflect on what the court views as a reasonable amount that should be paid by the unsuccessful party rather than any exact measure of the actual costs of the successful litigant. In *Boucher [Boucher v. Public Accountants Council for the Province of Ontario (2004), 71 O.R. (3d) 291 (C.A.)]*, this court emphasized the importance of fixing costs in an amount that is fair and reasonable for the unsuccessful party to pay in the particular proceeding at para. 37, where Armstrong J.A. said: "[t]he failure to refer, in assessing costs, to the overriding principle of

<sup>4</sup> *McCracken v. Canadian National Railway*, 2012 ONSC 6838; *Hague v. Liberty Mutual Insurance Co.*, [2005] O.J. No. 1660 (S.C.J.); *Pike's Tent and Awning Ltd. v. Cormdale Genetics Inc.* (1998), 27 C.P.C. (4th) 352 (Ont. Gen. Div.); *Bell Canada v. Olympia & York Developments Ltd.* (1994), 17 O.R. (3d) 135 (C.A.).

<sup>5</sup> *Boucher v. Public Accountants Council for the Province of Ontario* (2004), 71 O.R. (3d) 291 at para. 24 (C.A.); *Stellarbridge Management Inc. v. Magna International (Canada) Inc.*, [2004] O.J. No. 2102 at para. 97 (C.A.); *Zesta Engineering Ltd. v. Cloutier* (2002), 21 C.C.E.L. (3d) 161 at para. 4 (Ont. C.A.); *McGee v. London Life Insurance Co.*, [2008] O.J. No. 5312 at paras. 5-8 (S.C.J.); *Caputo v. Imperial Tobacco Ltd.* (2005), 74 O.R. (3d) 728 at paras. 23-25 (S.C.J.); *Lee v. General Motors Co. of Canada*, [2004] O.J. No. 2245 (S.C.J.).

<sup>6</sup> *Davies v. Clarington (Municipality)* (2009), 100 O.R. (3d) 66 at para. 52 (C.A.).

<sup>7</sup> *Das v. George Weston Limited*, 2017 ONSC 5583 at para. 65, var'd 2018 ONCA 1053.

<sup>8</sup> (2009), 100 O.R. (3d) 66 (C.A.).

reasonableness, can produce a result that is contrary to the fundamental objective of access to justice."

[12] Although the unsuccessful party is not obliged to disclose what he or she expended on costs, where the unsuccessful party submits that the costs claimed by the successful party are excessive, evidence of what he or she expended is relevant to the determination of what is reasonable and of what the unsuccessful party might reasonably have expected to pay and the failure to proffer this evidence tempers and diminishes the unsuccessful party's criticism of the excessiveness of the costs claim.<sup>9</sup> An attack on the quantum of the opponent's claim for costs without disclosing one's own bill of costs is no more than an attack in the air.<sup>10</sup>

[13] To explain the above costs awards, I have 14 observations or conclusions, as follows.

[14] First, as partially noted in my Reasons for Decision, in numerous ways and to varying degrees of significance, all of the parties did not comply with the *Rules of Civil Procedure*.<sup>11</sup>

[15] Second, as partially noted in my Reasons for Decision, in numerous ways and to varying degrees of significance, all of the parties did not comply with the law of evidence.

[16] Third, in numerous ways and to various degrees of significance, all of the parties denied or refused to make admissions that should have been admitted.

[17] Fourth, in numerous ways and to various degrees of significance, all the parties took steps that were improper, vexatious, unnecessary, or out of an abundance of caution.

[18] Fifth, the conduct of all the parties unnecessarily lengthened the duration of the proceedings.

[19] Sixth, thus, all the parties in numerous ways contributed to making this proceeding the opposite of the just, most expeditious and least expensive determination of the proceeding on its merits; however, although there is a superabundance of procedural blame to be shared, the most egregious and predominant perpetrator was LivingArt, which engaged counsel to expend approximately 300 hours of lawyer's time for the purposes of a deficient, ill-advised, avaricious, and failed attempt to secure interlocutory relief and to destroy the livelihood of the Defendants.

[20] Seventh, had LivingArt been the successful party, its claim for costs on a partial indemnity basis would have been **\$170,675.40**, all inclusive.

[21] Eighth, the joint claim for costs on a partial indemnity basis, all inclusive, of Merenich, Sokolov, and the Rada Group is **\$210,015.17** (\$38,865.83 + \$51,149.34 + \$120,000). Had LivingArt been solely blameworthy for this extraordinary expenditure of legal expenses for an interlocutory motion, I would have reduced the joint claim on account of some unnecessary or unreasonable claims made by the Defendants.

[22] Ninth, ultimately, I award the Defendants **\$170,000** jointly, of which Merenich's several share is \$35,000 and Sokolov's and the Rada Group's joint share is \$135,000. In other words, I have reduced the Defendants' joint costs claim by \$40,015.17 for Sokolov and the Rada Group to take into account the unreasonable claims made by the Defendants and to take into account the

<sup>9</sup> *Chapman v. Benefit Plan Administrators Ltd.*, 2014 ONSC 537 at paras. 11-12; *MacDonald v. BMO Trust Co.*, 2012 ONSC 2654 at para. 27; *Hague v. Liberty Mutual Insurance Co.* (2005), 13 C.P.C. (6th) 37 at para. 15 (S.C.J.).

<sup>10</sup> *United States of America v. Yemec*, [2007] O.J. No. 2066 (Div. Ct.) at para. 54; *Risorto v. State Farm Mutual Automobile Insurance Co.* (2003), 64 O.R. (3d) 135 at para. 10 (S.C.J.).

<sup>11</sup> R.R.O. 1990, Reg. 194.

Defendants' contribution to the substantive, evidentiary, and procedural pus.

[23] Tenth, as may be appreciated, I have rejected Merenich's and Sokolov's request for substantial indemnity costs. At this juncture of the proceeding, there is no basis for a punitive damages award.

[24] Eleventh, there is no merit to LivingArt's submission that the Defendants should receive an award of \$0.0 because of their failure to deliver a costs outline before the argument of the interlocutory motion. There is no basis to think that the parties' respective costs submissions are other than honest and accurate accounts of the hours expended on legal work.

[25] Twelfth, and further to the eleventh observation, had LivingArt not provided a costs estimate, then its costs submissions about the excessive and unwarranted expenditures of the Defendants would have been no more than an attack in the air. Ultimately, as noted above, I reduced the Defendants' aggregate claim for costs on a partial indemnity basis by \$40,015.17 (\$3,865.83 + \$36,149.34).

[26] Thirteenth, the lawyer of record for Merenich was Dvorkina Law Group, and as the successful party on the motion, Merenich is entitled to be indemnified for his legal costs on a partial indemnity basis in accordance with the normal principles that inform the court's discretion with respect to costs. Having reviewed Merenich's costs submission the appropriate award on a partial indemnity basis is \$35,000 to indemnify Merenich for what he owes Dvorkina Law Group.

[27] Fourteenth, in accordance with the normal principles that guide the court's discretion with respect to costs, as successful parties, Sokolov and the Rada Group are entitled to be indemnified for their respective costs on a partial indemnity basis. Cambridge LLP was the lawyer of record for Sokolov throughout, and Cambridge came to be the lawyer of record for the Rada Group. Before Cambridge LLP came to be the lawyer of record for the Rada Group, first Dentons LLP and then ME Professional Group were the Rada Group's lawyers of record.

[28] Fifteenth, in their joint costs submissions: (a) Sokolov seeks to be indemnified for costs of \$51,149.34, all inclusive, on a partial indemnity basis for the legal services of Cambridge LLP; and (b) the Rada Group seeks \$120,000, all inclusive, to be indemnified for costs on a partial indemnity basis for the legal services of Dentons LLP, ME Professional Group, and Cambridge. Thus, jointly, Sokolov and the Rada Group claim costs on a partial indemnity basis of \$171,149.34, all inclusive. In my opinion, this amount is excessive and unreasonable and the appropriate award on a partial indemnity basis to indemnify Sokolov and the Rada Group is \$135,000, all inclusive.

[29] Orders accordingly.

Perell, J.

Released: June 25, 2024

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**LIVINGART KITCHENS INC.**

Plaintiff

- and -

**ALEXANDER MERENICH, AM ALPHA  
CONSTRUCTION TRADE INC., BORIS  
SOKOLOV, ZAFAR SODIKJONOV, also known as  
ZAFARJON SODIKJONOV, IRADA  
SODIKJONOVA, RADA GROUP INC., ZAFAR  
SODIKJONOV, also known as ZAFARJON  
SODIKJONOV CARRYING ON BUSINESS AS  
GLOBAL DEVELOPMENT**

Defendants

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**REASONS FOR DECISION – COSTS**

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PERELL J.

**Released:** June 25, 2024