

COURT OF APPEAL FOR ONTARIO

CITATION: Hanson Crossborder Tax Inc. v. Bazar McBean LLP, 2024 ONCA
645

DATE: 20240829
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Trotter, Thorburn and Dawe JJ.A.

BETWEEN

Hanson Crossborder Tax Inc. and Elena Hanson

Plaintiffs (Respondents)

and

Bazar McBean LLP and S. David Bazar and S.D. Bazar Professional Corporation

Defendants (Appellants)

Michael E. Girard, for the appellants

Orie Niedzviecki, for the respondents

Heard: March 25, 2024

On appeal from the judgment of Justice James A. Ramsay of the Superior Court of Justice, dated November 5, 2021, with reasons reported at 2021 ONSC 7340.

COSTS ENDORSEMENT

[1] On March 25, 2024, we allowed the appellants' (defendants') appeal in part, reducing the damages awarded to the respondents (plaintiffs) at trial. We ordered that the appellants were entitled to costs of the appeal in the amount of \$17,000 (inclusive of disbursements and HST). This amount was agreed to by the parties. The parties also agreed that if the appellants were to succeed on appeal, it would

impact on the costs award at trial, based on the appellants' pre-trial Offer to Settle. As a result of this court's judgment, the respondents' damages were reduced far below the appellants' Offer to Settle.

[2] In his Costs Endorsement, the trial judge noted that the respondents sought costs on a partial recovery basis in the amount of roughly \$80,000. The appellants submitted that \$55,000 was reasonable, reduced by half to account for the divided success. The appellants offered to settle for approximately \$83,000. At trial, the respondents received a net award of \$81,223 (\$71,223 + \$40,000, less \$30,000 for the defamation damages). On appeal the net award to the appellants was \$24,841.

[3] The trial judge observed that success between the parties was divided. He acknowledged that the respondents' claim was meritorious in the sense that Ms. Hanson should be paid for her work in 2014. This entitled her to costs on a partial indemnity basis. However, based on the respondents' "reprehensible conduct in defaming" the appellants, and in light of the divided success, the trial judge concluded that, although \$50,000 would be an amount reasonably contemplated by the parties, it should be reduced to \$35,000.

[4] Relying on r. 49 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, the appellants submit that, because the respondents' total award was reduced on appeal to an amount substantially below the Offer to Settle, costs payable to the

respondents should be reduced to \$17,531.50. The appellants also seek costs from the respondents subsequent to the Offer to Settle in the amount of \$60,515.

[5] The respondents submit that they are entitled to costs on a partial indemnity basis, to the date of the Offer to Settle, in the amount of \$30,495.70. They submit that the appellants should not receive any costs for the trial. Alternatively, they submit that, if the appellants are entitled to costs, it should be on a partial indemnity basis from the date of the Offer to Settle, in the amount of \$33,052.50.

[6] In our view, the most important consideration in terms of costs at trial remains the divided success of the parties and their general approach to this litigation. This drove the trial judge's assessment. He noted that the trial was prolonged "by the insistence of both parties on calculating the amounts owed based on imaginary agreements." Moreover, both parties were unrealistic in their claims. The respondents sought \$287,885.88, far more than what was awarded at trial, and which was reduced on appeal. Moreover, the appellants claimed damages in the amount of \$1 million dollars for, *inter alia*, defamation when only \$30,000 was awarded.

[7] We agree that the appellants are entitled to their costs from the date of the Offer to Settle. However, we accept the respondents' submissions on the parties' relative quantum of costs at trial. Given that the off-setting amounts are almost equal, we set aside the trial judge's costs award and make no further order as to

costs. Given the positions of the parties at trial, and the resultant trial time required to accommodate these positions, and notwithstanding the appellants' Offer to Settle, this is a case in which the parties should bear their costs in the court below.

"Gary Trotter J.A."

"Thorburn J.A."

"J. Dawe J.A."