CITATION: Tewari v. Hantover Canada Inc., 2024 ONSC 6638
NEWMARKET COURT FILE NO.: CV-22-3653-00
DATE: 20241127

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
GUARAV TEWARI	)	
Plaintiff/Responding Party	)	Guarav Tewari, Self-Represented Plaintiff/Responding Party
– and –	)	
HANTOVER CANADA INC.	)	
Defendant	)	Kevin Graham and Eric Turner, for the Defendant/Moving Party
	)	**HEARD:** By written submissions

DECISION ON COSTS

HEALEY, J.:

Overview

[1] This costs decision follows a successful motion by the Defendant, Hantover Canada Inc. ("Hantover") for a permanent or temporary stay of proceedings. This court ordered a permanent stay on the basis that the action is duplicative of an existing action, is an abuse of process, and raises no reasonable cause of action.

[2] Submissions on costs were provided in writing, as directed by the court. This court further placed a page limit on submissions, permitting no more than five double-spaced pages, not including a Bill of Costs. All authorities relied on were to be hyperlinked in the document or uploaded to Case Center with a hyperlinked index.

[3] The Defendant's submissions complied with this direction. The Plaintiff's did not. His submissions were 28 pages long, plus exhibits, not all of which were case law. In total, the document was 64 pages, with no hyperlinks. The Plaintiff's submissions primarily attempted to relitigate the issues on the motion. The Plaintiff continues to assert allegations

of impropriety against the Defendant and its lawyers. These submissions, both in length and content, are further evidence that the Plaintiff believes himself to be unconstrained by orders of the court, the *Rules of Civil Procedure*, R.S.O. 1990, Reg. 194, and the law as it applies to the proceedings that he has initiated.

[4] The Defendant seeks its costs on a substantial indemnity basis on several grounds. Primary of those is the Plaintiff's unreasonable conduct in the litigation, which has unnecessarily lengthened the proceeding and increased its costs. Also of significance is the nature of the allegations made against the Defendant, which included accusations of fraud, conspiracy and breach of fiduciary duty.

[5] The Defendant seeks its costs of the action on a substantial indemnity basis in the amount of $86,843.

Legal Framework

[6] The court has broad discretion in deciding whether to award costs, to whom, and in what amount: *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 131. However, that discretion must be exercised in accordance with the provisions of an Act or the *Rules of Civil Procedure*: *14657788 Ontario Inc. v. 1122077 Ontario Ltd*. (2006), 82 O.R. (3d) 757 (C.A.), at para. 25.

[7] Rule 57.01 of the *Rules of Civil Procedure* sets out the factors a court may consider when deciding costs. Despite these factors, the court's authority under Rule 57.01(1) remains discretionary: *Ontario v. Rothmans Inc*., 2013 ONCA 353, 115 O.R. (3d) 561, at para. 134. Costs may also be affected by the provisions in Rule 49, which governs cost consequences when an offer to settle is made and not accepted.

[8] Costs rules are designed to foster three fundamental purposes: (1) to indemnify successful litigants for the cost of litigation; (2) to encourage settlements; and (3) to discourage and sanction inappropriate behavior by litigants: *Fong v Chan* (1999), 46 O.R. (3d) 330 (C.A.), at para. 22; *Serra v. Serra*, 2009 ONCA 395, 66 R.F.L. (6th) 40, at para. 8.

[9] In this era, when judges, lawyers and litigants are being strongly urged to use court resources more efficiently, courts are routinely using cost orders to shape how litigants approach their use of the justice system. The spectre of a cost award against a party taking unnecessary steps or unreasonable positions is intended to encourage litigants to pursue only legally sound proceedings, defences and interlocutory steps. The court in *14657788 Ontario Inc.*, at para. 26, explained that cost awards have shifted away from the sole or primary purpose of indemnification:

> Traditionally the purpose of an award of costs within our "loser pay" system was to partially or, in some limited circumstances, wholly indemnify the winning party for the legal costs it incurred. However, costs have more recently come to be recognized as an important tool in the hands of the court to influence the way the parties conduct themselves and to prevent abuse of the court's process. Specifically,

> the three other recognized purposes of costs awards are to encourage settlement, to deter frivolous actions and defences, and to discourage unnecessary steps that unduly prolong the litigation. See *Fellowes, McNeil v. Kansa General International Insurance Co*. (1997), [37 O.R. (3d) 464, at pp. 467, 472 (Ont. Gen. Div.)].

[10] The overarching principle when fixing costs is that the amount of costs awarded be reasonable in the circumstances: *Davies v. Clarington (Municipality)*, 2009 ONCA 722, 100 O.R. (3d) 66, at para. 52.

[11] The court must also bear in mind the principle of parity: unsuccessful litigants should expect to pay similar amounts by way of costs across similar pieces of litigation involving similar conduct: *Walker v. Ritchie*, 2006 SCC 45, [2006] 2 S.C.R. 428, at para. 28; *14657788 Ontario Inc.*, at paras. 39-40.

[12] A consideration of experience, rates charged and hours spent is appropriate, but is subject to the overriding principle of reasonableness in the context of the particular case. The quantum awarded should reflect an amount that the court considers to be fair and reasonable, rather than any exact measure of the actual costs to the successful party: *Anderson v. St. Jude Medical, Inc.* (2006), 264 D.L.R. (4th) 557, at para. 22; *Zesta Engineering Ltd. v. Cloutier* (2002), 21 C.C.E.L. (3d) 161 (Ont. C.A.), at para. 4; *Boucher v. Public Accountants Council for the Province of Ontario* (2004), 71 O.R. (3d) 291 (C.A.), at para. 24.

[13] The reasonable expectation of the unsuccessful party is one of the factors to be considered in determining an amount that is fair and reasonable: *St. Jude Medical*, at para. 22; *Boucher*, at para. 38.

[14] The type of considerations that have attracted full indemnity costs are summarized at para. 124 of *Envoy Relocation Services Inc. v. Canada (Attorney General)*, 2013 ONSC 2622, as follows:

(a) "[G]rave positive misconduct" on the part of the blameworthy party;

(b) But for the blameworthy party's misconduct, the matter, or at least a significant component of the litigation, should never have reached the courts;

(c) The non-offending party did nothing to hinder, delay or confuse the litigation;

(d) The blameworthy party's conduct was contemptuous in forcing the "aggrieved party to exhaust legal proceedings to obtain that which was obviously his";

(e) The blameworthy party involved the court in its deceit by attempting to mislead it, which deception was only unearthed during the trial due to the

intervention of the court, and which had a significant, if not dispositive impact, on the outcome of the trial;

(f) the matter involved a scurrilous attack on the administration of justice or waste of scarce judicial resources.

[15] More recently, in *Hampton Securities Limited v. Christina Nicole Dean*, 2018 ONSC 1585, at para. 24, aff'd 2018 ONCA 901, 51 C.C.E.L. (4th) 244, the court explained that "[a] legitimate public purpose of cost orders is to discourage inappropriate conduct. A cost award based on the principle of full indemnity does that."

Analysis

The Plaintiff's Unreasonable Behavior

[16] In the Reasons for Decision on the motion, at paragraphs 2 and 6 to 9, I referenced some of the Plaintiff's conduct that unnecessarily lengthened the proceeding and complicated the motion.

[17] To that I would add: the Plaintiff's factum was 294 pages in length, his responding motion record 106 pages, and his prohibited "cross interlocutory motion" record 1,187 pages.

[18] It is clear from the evidence on the motion contained in the affidavit of Kim Poulin that Mr. Graham attempted to explain to the Plaintiff the numerous problems with his pleading well before this motion was brought, as early as December 7, 2022. Even in the face of being advised that he had originally sued the wrong entity, the Plaintiff attempted to schedule a long motion for an injunction, demanded a statement of defence, and ultimately noted the incorrectly named defendant in default. With great clarity (and patience) Mr. Graham's correspondence repeatedly explained to the Plaintiff his procedural missteps. The correspondence also shows that the Plaintiff was obtusely indifferent to those explanations and conducted himself in accordance with his own interpretation of the *Rules* and the law.

[19] In short, the Plaintiff's conduct has been unreasonable throughout this litigation. He has driven up costs unnecessarily. The pleading itself, being entirely duplicative of another claim in which he has sued the Defendant, is the ultimate waste of costs, burden on the court system, and a source of unnecessary harassment for the Defendant. The Defendant attempted to course-correct the litigation and curtail the costs from the outset, but these overtures were ignored by the Plaintiff. This is the type of conduct that should be sanctioned through an elevated cost award. Not only is this necessary to mark the court's disapproval of the Plaintiff's litigation conduct and to deter others, but to specifically deter the Plaintiff.

[20] As noted at paragraphs 22, 25 and 49 of my Reasons, Mr. Tewari has advanced multiple actions in the Superior Court and has demonstrated an impulse to appeal decisions of this court whenever possible. Some of these were referenced in *Tewari v. Sekhorn*, 2024 ONCA

123. He also has multiple unpaid cost awards totalling $325,125.56, from this proceeding and other actions.

[21] I note that costs have previously been awarded on a substantial indemnity basis against the Plaintiff due to his "ongoing unfounded allegations": *Tewari v. McIntyre*, 2023 ONCA 628, at para. 16 ("*Tewari (2023)*").

Nature of the Allegations

[22] The claim sought damages of $8.5 million from the Defendant and accused the Defendant of fraud, conspiracy and breach of fiduciary duty.

[23] In *Manning v. Herb Epp*, 2006 CanLII 35631 (Ont. S.C.), at para. 8, Lax J. stated that "[w]here serious allegations of dishonest or illegal acts are made, but are so inadequately pleaded that they are not permitted to go forward, cost consequences should likewise follow". This is sound reasoning, which I adopt.

[24] In *1175777 Ontario Ltd. v. Magna International Inc.*, 61 R.P.R. (4th) 68 (Ont. S.C.), the plaintiff failed to prove its conspiracy claim and its entire claim was dismissed. Costs were awarded to the defendants on a substantial indemnity basis. Horkins, J. noted that serious allegations were made that attacked the business ethics of the defendants: at para. 47. At paragraphs 42 and 43, she determined that substantial indemnity costs were warranted on the basis of the failed conspiracy allegation against the individual defendant, Frank Stronach. I see no reasons to distinguish *1175777 Ontario Ltd*. from the one before this court, even though none of the individual officers or directors of the Defendant were named in the proceeding. The reputation and goodwill of a corporation deserves consideration of an elevated cost award as much as an individual in circumstances where no reasonable cause of action can be established against it, and allegations of fraud and conspiracy have been levelled against it.

[25] I have examined the Bill of Costs of the Defendant. The Plaintiff made no submissions about the amount of time spent or the rates charged.

[26] Certainly, there are more docketed hours than what would normally be expected for a motion of this nature. However, I have considered that this matter has been going on since late 2022 and a significant amount of resources and time have had to be put to the matter, given its importance to the Defendant. I have also considered the length of the material filed by the Plaintiff, and its convoluted nature. There has also been voluminous correspondence that has arisen from trying to deal efficiently with the action and the motion. This includes dealing with the Plaintiff's resistance to amending his pleading, scheduling a long motion, providing particulars and his insistence on attempting to proceed with a cross motion despite clear direction from this court that he was prohibited from doing so until the Defendant's motion was determined.

[27] In his submissions, the Plaintiff resists any award of costs, or in the alternative, asked that a cost award be limited to $1,000 with a payment plan, because of impecuniosity.

[28] Faced with a similar plea from the unsuccessful party of inability to pay costs, the Divisional Court in *Gravesande v. Toronto (City)* (2006), 208 O.A.C. 315 (Div. Ct.) refused to consider impecuniosity, stating at para. 7 that "[i]t is not part of our mandate, nor relevant to the issue of costs, to consider the financial circumstances of the party who is ordered to pay costs". The court completely changed this position in *Kuffuor v. First Bus Canada*, 2014 ONSC 2297 (Div. Ct.), where the court stated at para. 37 that "the financial circumstances of the losing party can be a consideration in a decision on costs and is captured by Rule 57.01(1)(i) as 'any other matter relevant to the question of costs'". In reaching that conclusion, the Divisional Court relied on *Belvedere v. Brittain Estate*, 2009 ONCA 691, 71 R.F.L. (6th) 1 (Ont. C.A.). *Belvedere* is a case in which the Ontario Court of Appeal withheld costs because of the losing party's financial circumstances, but also because of what it described as the unfortunate circumstances of the case, being the express, but legally unenforceable, intention of the testator to benefit the losing party with a large sum of money through his estate but dying before he was able to give that intention legal effect. In doing so, the court in *Belvedere* noted that this was "one of those rare cases in which the court should exercise its discretion to make no costs award": at para. 8.

[29] The approach in *Kuffuor* appears to be the one now adopted in this court. In *Agius v. Home Depot Holdings Inc*., 2011 ONSC 5272, at para. 17, Justice Ricchetti described the law as follows:

> It would appear that impecuniosity, as a rule, should not and does not eliminate or reduce a party's liability for costs for the reasons expressed in *Myers*, *Maher* and *Greenhalgh*. Rather, impecuniosity of the paying party, if established, may be one of the factors the court could consider in the exercise of the court's discretion under s. 131 of the *Courts of Justice Act* in determining a reasonable amount of costs. This approach was described by Lane J. in *Walsh v. 1124660 Ontario Ltd*… at paras. 15-20:
>
> > In the present case, unlike *Myers*, we are dealing with costs after the trial is over, so no issue of on-going non-compliance with orders, or defying the court exists. There is no future conduct of this plaintiff to deter. The simple question is whether there can be a consideration of the paying party's means in considering the disposition of costs. In my opinion, the answer to this question must be yes where impecuniosity is demonstrated. Any other answer creates a straightjacket which is inconsistent with the discretionary nature of all costs orders. In my opinion, impecuniosity falls within Rule 57.01: "any other matter relevant to the question of costs." Whether to consider it as a factor in any particular

> case remains a matter within the discretion of the judge.
>
> As a result, I am satisfied that impecuniosity, if established, is a factor the could [court] may consider in the court's exercise of its discretion in determining costs but the court should do so cautiously keeping in mind the concerns described by the court in *Myers* and the other authorities. [Citations omitted, emphasis removed.]

[30] More recently, in *Massiah v. Justices of the Peace Review Council*, 2018 ONSC 3097 (Div. Ct.), at para. 14, the court took into account the applicant's financial circumstances in determining the quantum of substantial indemnity costs but noted that "impecuniosity will not shield litigants from accountability for the costs of reprehensible, scandalous, and outrageous conduct".

[31] The Plaintiff has not provided evidence of impecuniosity beyond one screenshot of an account summary, which is not sufficient to fully gauge his ability to pay a cost award.

[32] Further, his unreasonable behavior has resulted in the Defendant not having to pay its lawyers a modest sum to defend against a claim that was an abuse of process and disclosed no reasonable cause of action, but rather a sum that comes close to six figures.

[33] An award of costs in the range requested will not be new to the Plaintiff, and so can be reasonably within his expectation. On October 31, 2022, Dunphy J. dismissed the Plaintiff's action and ordered costs against him in the amount of $172,125.56: *Tewari v. McIntyre*, 2024 ONSC 6322, at para. 5; *Tewari (2023)*, at para. 4. The Plaintiff appealed Justice Dunphy's decision to the Ontario Court of Appeal, where the decision was upheld and the plaintiff ordered to pay a further $131,000 in costs: *Tewari (2023)*, at para. 16.

[34] The Plaintiff has also been warned throughout that substantial indemnity costs will be pursued.

[35] Having weighed all of the factors in r. 57.01 and stepping back to consider the reasonableness of the costs overall, I award costs to the Defendant in the amount of $82,000 inclusive. This is slightly less than the amount requested, in recognition of the likelihood that with four lawyers and one law clerk working on the file over the last two years, there will have been some duplication and overlap of work.

Madam Justice S.E. Healey

Released: November 27, 2024