

**CITATION:** Latchmiah v. Durocher, 2023 ONSC 2487

**COURT FILE NO.:** CV-17-586745

**DATE:** 20230424

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Ashna Latchmiah, Plaintiff

**AND**

Gary Durocher, Harish Patel, Robert Beard, 1387784 Ontario Inc., and Tolulope Adewumi, Defendants

**BEFORE:** W.D. Black J.

**COUNSEL:** Tanya C. Walker for the Plaintiff

*Kelli Presston*, for the Defendant Gary Durocher

*Bernard Gasee*, for the Defendants Robert Beard and 1387784 Ontario Inc.

*Pathik Baxi*, for the Defendant Harish Patel

*No one appearing for the Defendant Tolulope Adewumi, noted in default*

**HEARD:** In-writing

**ENDORSEMENT ON COSTS**

- [1] I heard the trial in this matter over the course of a number of days in November and December of 2022.
- [2] I released an endorsement on February 24, 2023 setting out my decision.
- [3] In that endorsement I directed the parties to attempt to agree on costs, failing which I established a schedule for the exchange of written submissions. The parties were unable to agree on costs, and therefore exchanged and filed written submissions.
- [4] This is my decision on costs.

- [5] The case was somewhat complex, but the salient aspects of my findings at trial, for costs purposes, are that:
- (a) The plaintiff Ashna Latchmiah was entitled to retain title to and vacant possession of the Cedar Grove Property;
  - (b) The defendant, Harish Patel breached his duty and standard of care in relation not only to Ms. Latchmiah, but also in relation to his co-defendant Gary Durocher;
  - (c) In consequence of those breaches, Mr. Patel is liable to Mr. Durocher for the \$20,000.00 paid by Mr. Durocher towards Ms. Latchmiah's purchase of the Cedar Grove Property, and is liable to Ms. Latchmiah and to Mr. Durocher, respectively, for their costs;
  - (d) The conduct of the defendants, Robert Beard and 1387784 Ontario Inc. ("138"), was such that Mr. Beard and 138 are also liable to Ms. Latchmiah for her costs. I note that as a result of the conduct of Mr. Beard and 138, Mr. Durocher also seeks that they pay his costs as well.
- [6] Dealing first with the costs of Ms. Latchmiah, she claims costs on a full indemnity scale from Mr. Patel, Mr. Beard and 138, in the amount of \$198,034.34 (including disbursements). In the alternative, she claims those costs on a substantial indemnity scale in the amount of \$179,128.42, or in the further alternative, on a partial indemnity basis in the amount of \$122,410.67.
- [7] Ms. Latchmiah also claims costs for Mr. Patel's motion at the outset of trial setting aside the noting in default against Mr. Patel, and costs for her own motion at the outset of trial to amend her statement of claim.
- [8] Mr. Durocher, for his part, in addition to payment by Mr. Patel of the \$20,000.00 noted above, claims costs from Mr. Patel, and from Mr. Beard and 138 on a full indemnity basis (including disbursements) in the amount of \$119,404.92, or alternatively, on a substantial indemnity basis in the amount of \$101,865.87, or on a partial indemnity basis in the amount of \$78,480.52.
- [9] The responding parties from whom costs are sought take similar positions to one another.
- [10] Essentially they say, in each case, that their respective involvement was minimal and peripheral, that the amounts sought against them, particularly by the plaintiff, are excessive, and that, to the extent they are required to pay costs, a much more nominal figure would be appropriate.

- [11] They also maintain that there is no basis for an award of costs on a scale higher than partial indemnity.
- [12] In the case of Mr. Beard and 138, these parties also allege that the Court should not, in awarding costs, overlook the role of Mr. Adewumi. Beard and 138 allege that it must have been Mr. Adewumi who was responsible for any forgery of documents, and say – without evidence to this effect – that Mr. Adewumi’s fraud (in other contexts), has already cost them substantial sums, such that imposing costs on any scale higher than partial indemnity on a modest basis would serve to “victimize the victim”.
- [13] As always, in assessing costs, I must consider the various factors set out in Rule 57.01 in exercising my discretion.
- [14] Dealing with those among the Rule 57.01 factors applicable here, I find that:
- (a) The rates charged by counsel for Ms. Latchmiah and Mr. Durocher, respectively, are reasonable, as are the hours spent. Ms. Walker, of counsel for Ms. Latchmiah, took over the file from previous counsel and it appears that there was, as one might expect, modest overlap/duplication of work which in my view should correspondingly reduce the costs award;
  - (b) Each of Mr. Patel, Mr. Beard and 138 argue that, given their peripheral roles, the amount of costs claimed against them could not reasonably have been anticipated. While I understand the submission and will take it into account in my overall assessment, each of those parties fully participated in a trial spanning seven days of evidence and requiring additional work for (written) submissions, and in my view the amounts claimed by Ms. Latchmiah and Mr. Durocher are in no way out of proportion to a trial of that length;
  - (c) As noted, the proceedings were somewhat complex, and the complexity was caused in considerable part by the lackadaisical way in which Mr. Patel “structured” the transaction at the heart of the proceeding. It was also caused by the conduct of Mr. Beard in seeking to obtain security over the Cedar Grove Property once Ms. Latchmiah took title, in a fashion that was inappropriate and mendacious;
  - (d) While the case may not have been particularly important to Mr. Patel or to Mr. Beard, it was very important for Ms. Latchmiah and for Mr. Durocher;
  - (e) As noted in my original endorsement, and repeated here to some extent, the conduct of Mr. Patel, Mr. Beard and 138 was problematic in various respects, and caused both complexity and additional time, including in particular at trial.

- [15] On the question of the appropriate scale of costs, I find that Mr. Patel's conduct, while patently substandard, was not conduct of a type to attract costs on a scale higher than partial indemnity. That is, he did not exhibit obvious dishonesty or unduly delay the proceedings, notwithstanding my findings of negligence on his part.
- [16] In the case of Mr. Beard and 138, their conduct (specifically that of Mr. Beard), was in fact at odds with the type of conduct that the Court is entitled to expect. On the other hand, with respect to these parties it is fair to observe that the extent of the financial damage caused by that unacceptable conduct was minimal in the overall scheme, given that the 138 mortgage was in a modest face amount.
- [17] As such, in my view the Court's condemnation of the unacceptable conduct of Mr. Beard and 138 can be achieved by an award of costs on a partial indemnity basis, given that the amount of costs, even on that basis, will be substantial in relation to the amount of the 138 loan.
- [18] As such, I find that Mr. Patel, on one hand, and Mr. Beard/138 on the other, are severally liable for Ms. Latchmiah's partial indemnity costs, in the amount half each of \$90,000.00 (so \$45,000.00 each), inclusive of disbursements.
- [19] Mr. Patel is also liable for Mr. Durocher's partial indemnity costs, in the amount of \$50,000.00, inclusive of disbursements.
- [20] I find that Mr. Adewumi, who was noted in default and did not attend or participate at trial, is also jointly and severally liable (together with Mr. Beard and 138) for half of Ms. Latchmiah's costs.
- [21] In addition, Mr. Patel is liable for Ms. Latchmiah's costs related to Mr. Patel's motion to set aside the noting in default of Mr. Patel, also on a partial indemnity basis, in the amount of \$5,000.00.
- [22] I decline to award costs to Ms. Latchmiah for her motion at the outset of trial to amend her claim.
- [23] The costs awards are all payable within 30 days of the date hereof.



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W.D Black J.

**Date:** April 24, 2023