

[1] The plaintiffs' claims were dismissed in their entirety on the basis set out in my reasons for decision, *Rana et al. v. Ramzan et al.*, 2023 ONSC 5792. The defendants seek their costs on a full indemnity basis in the sum of \$270,791.12 or on a substantial indemnity basis in the sum of \$246,213.93.

[2] It is further asserted on behalf of the defendants that counsel for the plaintiffs should be found personally liable for the defendants' costs as a result of the way he conducted this action and the trial on behalf of the plaintiffs.

[3] Had I determined that there was a *prima facie* basis for such an award of costs against the plaintiffs' counsel, I would have directed him to engage counsel to represent his potential personal exposure to an award of costs.

[4] While the way the trial was conducted and the litigation strategies implemented by the plaintiffs' counsel were, from time to time, ill-conceived in many respects, I cannot conclude that an award of costs against counsel personally would be warranted in this case.

[5] Having been fully successful in their defence of the plaintiffs' claims, the defendants are presumptively entitled to costs. The level and quantum of costs remain to be determined.

[6] The plaintiffs' action, while principally framed as claims in fraud and deceit, failed to meet the minimum requirements for the pleading of these causes of action.

[7] Furthermore, as the evidence at trial unfolded, additional causes of action were asserted beyond those expressly made in the statement of claim. These arose during the evidence and in submissions from plaintiffs' counsel.

[8] It was submitted that the defendant Ramzan was liable to the plaintiffs in agency in his role as the alleged agent for the plaintiffs as well as, alternately, in his capacity as the operating mind of both his company FHS Zoom and ET Zone, as a corporate director.

[9] Thus, the pleadings, the evidence adduced by the plaintiffs, and the closing submissions put forward an evolving theory of the plaintiffs' case against the defendants, which needlessly complicated and lengthened the trial.

[10] Unfortunately, also because of the Covid pandemic, the time needed to complete the evidence was prolonged, through no fault on the part of either counsel.

[11] As to other considerations that need to be examined in determining a fair and reasonable award of costs, it was not until the closing oral submissions that counsel for the plaintiffs acknowledged that the plaintiffs' claims were resting solely on the intentional torts of fraud and deceit and therefore the other possible causes of action including conspiracy, agency and director liability were no longer being advanced.

[12] Also, the failure to disclose material evidence must be factored into the determination of appropriate costs. As noted in my reasons for decision, the plaintiffs failed to disclose the Reference Agreement in their affidavit of documents. This was a harmful piece of evidence as far as the plaintiffs' credibility was concerned.

[13] As to the level of costs that would be appropriate, I have concluded that costs on a substantial indemnity basis are warranted in this case.

[14] The law is clear that fraud must be strictly pleaded and strictly proved: *Toronto Dominion Bank v. Leigh Industries Ltd. (Trustee of)*, [1998] O.J. 4221 at para 17. The plaintiffs failed on both counts.

[15] While not all actions in fraud that fail will warrant serious cost sanctions, where there is sufficient evidence to conclude that the party opposite would not be liable in fraud, cost sanctions may be appropriate: *Hamilton v. Open Window Bakery Ltd.*, 2004 SCC 9; *2651171 Ontario Inc. v. Brey*, 2022 ONCA 205 (CanLII).

[16] In this action the plaintiffs vigorously asserted their case against the defendant Ramzan in fraud and they made many unsupported allegations against him in their statement of claim which ultimately were not supported by evidence.

[17] The plaintiffs took a significant risk in impugning the character of the defendant Ramzan on a very inadequate evidentiary record and cost sanctions must follow that decision in an award of substantial indemnity costs.

[18] As to the quantum of costs claimed by the defendants on a substantial indemnity basis, it is asserted that the trial took 18 days. On the other hand, counsel for the plaintiffs asserts that the trial time was 10 days, however the total days of attendance involving full, or part days was actually 21 days. Some of these attendances were short and did not involve the testimony of witnesses, however counsel were still required to be in attendance either virtually or in person.

[19] Counsel for the defendants filed detailed submissions on costs along with a fully particularized bill of costs as to all time spent by counsel on each event prior to and through the trial. By contrast, counsel for the plaintiffs filed a bill of costs which was in summary form without the required particulars as to the actual events and the time spent on each. The plaintiffs' counsel's bill of costs on a substantial indemnity basis was in the sum of \$97,185.

[20] In considering the substantial indemnity costs as claimed by the defendants, I have concluded that they are fair, reasonable, and proportionate as provided for under rule 57.01 and that the costs are within the reasonable expectation of the plaintiffs: *Boucher v. Public Accountants Council for the Province of Ontario* (2004), 2004 CanLII 14579 (ON CA).

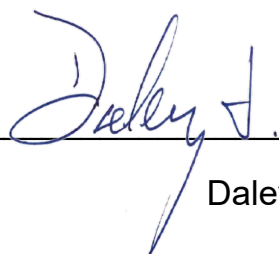
[21] The plaintiffs sought damages from the defendants in the sum of \$500,000 with respect to their lost investment, as well as general and aggravated damages

in the sum of \$200,000 in respect of the alleged fraud. The defendants were required to marshal a broad defence on several fronts.

[22] Having considered the defendant's costs submissions and their bill of costs, I am satisfied the time spent by counsel was entirely warranted and reasonable given the nature of the claims faced by the defendants. Furthermore, the hourly rates are fair and reasonable given the seniority of counsel. Also, it is notable, from the dockets submitted, that where appropriate, tasks were assigned to junior counsel at a lower billing rate.

[23] In the result, I award the defendants their costs, inclusive of disbursements and applicable taxes on a substantial indemnity basis in the sum of \$246,213.93 payable by the plaintiffs jointly and severally.

[24] A Judgment shall issue accordingly.



Daley J.

Released: December 11, 2023

CITATION: Rana et al. v. Ramzan et al., 2023 ONSC 6970
COURT FILE NO.: CV-17-00003509-0000
DATE: 2023 12 11

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

TAJAMMUL HUSSAIN RANA and
PREMIER TECHNICAL CONSULTANT
LTD.

Plaintiffs

- and -

MOHAMMAD ZAKIR RAMZAN, 2182224
ONTARIO INC. operating as FHS ZOOM
and MOHAMMAD YOUSUF

Defendants

COSTS ENDORSEMENT

Daley J.

Released: December 11, 2023