

P.4 for the sale of a property known as 7609 Somerset Park, in the Township of Severn, Ontario (the “Property”).

- b) The Respondent, Maria Cristina Gardeazabal (“Gardeaszabal”) brought a cross application seeking, among other things, a dismissal of the application and an interim injunction preventing the sale of the Property until the end of April 2024.

[2] The Applicants, Ms. Green and Mr. Dutra, were completely successful. They are presumptively entitled to costs.

Relevant Findings

[3] In my reasons I made the following material findings of fact:

[27] I find that the parties embarked on an investment venture. However, there was never any agreement on the terms of this venture. I find that the dinner meeting held by the parties on January 22, 2021 was no more than an expression of a wish list that outlined what a prospective property would look like. There was never any finality to such an expression of their wishes. This is evidenced by the notation in the notes of the meeting that read, “next steps decided by us”.

[28] The expressions in the notes of the meeting with respect to timelines, I find to be further examples of wishes as opposed to reasonable expectations. In addition, the notes make, a clear reference to projections of profitability and an inquiry as to a potential purchase price. I find that this amounts to planning and due diligence with respect to a potential investment. Once again it does not amount to reasonable expectations.

[29] I find that Gardeazabal did have an expectation of the length of time that the Property would be held, however, I find that expectation was a subjective one. Objectively, looking at all of the exigencies of investing in the real estate market, the setting of a minimum time to hold the investment is not a reasonable expectation given the nature of the investment.

[30] I find that Green and Dutra did not act in a manner that was in bad faith or in a manner that was “burdensome, harsh and

wrongful”, or an “abuse of power” or a “visible departure from standards of fair dealing.”

[31] I find that Green and Dutra gave a number of options to Gardezabal when they were confirming that they wanted to sell the Property. They no longer saw it as profitable, and it did not suit their needs at that time. In addition, they had lost confidence in Gardezabal’s ability to manage the Property, knowing that Green and Dutra were travelling frequently.

[32] None of the options were even considered by Gardezabal. One of the options was a potential buy out by her of Green and Dutra’s interest. Instead of responding or presenting a counteroffer, Gardezabal’s fiancée communicated with Green and Dutra that they would simply allow the mortgage to automatically renew and that would not allow them to get out of the mortgage that was coming due at the end of April.

The Law and Analysis

[4] When considering the issue of costs, the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, set out multiple factors for the court to address its mind to commencing at rule 57.01:

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;
- (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;
- (h.1) whether a party unreasonably objected to proceeding by telephone conference or video conference under rule 1.08; and
- (i) any other matter relevant to the question of costs.

[5] As indicated earlier in this endorsement, the Applicants were completely successful.

[6] The relationship between the parties had completely broken down. The Respondent could no longer trust the Applicants. At the same time, the Applicants also had concerns about the Respondent.

[7] The Applicants had a presumptive right to the partition and sale of this property.

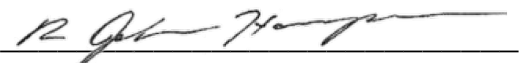
[8] The Applicants seek partial indemnity costs in the amount of \$42,589.42 and substantial indemnity costs of \$63,884.12.

[9] I have reviewed the summary of costs. I find that there are multiple charges for legal work done that is excessive and duplicating between junior and senior counsel. The amounts for legal research and correspondence and meetings with client are also somewhat excessive. Having said that, I find that the Applicants did not cooperate in moving this matter along in an expeditious and meaningful manner. They delayed in their filing of materials, at times, filing at the last minute.

[10] I accept the hourly rates charged however, given the duplication and excessive hours spent, I reduce the fees by 30%.

[11] As a result of my findings the appropriate amount for legal fees is set at the hours spent and rates charged to be reasonable. Under the circumstances of this case, the Applicants are entitled to their partial indemnity costs. I set those costs at \$30,000 inclusive of fees, disbursements and HST.

[12] The Respondent shall pay the sum of \$30,000, inclusive of fees disbursements and HST.


The Honourable R.J. Harper

Released: January 9, 2024

Corrigendum

1. Para 1 was amended from “Tatjana” to “Tatjana”.
2. Para 2 was amended from “Respondent Maria Christina Gardezabal was” to “Applicants, Ms. Green and Mr. Dutra” and from “she is” to “they are”.
3. Para 4 was amended to include the citation for the *Rules of Civil Procedure*.
4. Para 5 was amended from “Respondent was” to “Applicants were”.
5. Para 6 was amended, removing “The issues in this dispute were important to the Respondent.” and “and she had a presumptive right to the partition and sale of this property. Her life savings were tied up in this property and she needed whatever money she could salvage despite the real estate market being in decline. Her lack of trust and ability to work with the Applicants did not allow her to have the access that she needed to what was left of her savings.” and adding “At the same time, the Applicants also had concerns about the Respondent.”
6. Para 7 was added.
7. Para 7 was changed to para 8 and was amended from “Respondent” to “Applicants”, from “full” to “substantial”, and from “\$62,824.56” to “\$63,884.12”.
8. Para 8 was changed to para 9 and was amended from “Respondent is” to “Applicants are”.
9. Para 9 was changed to para 10.
10. Para 10 was changed to para 11.
11. Para 11 was changed to para 12 and was amended from “Applicants” to “Respondent”.

COURT FILE NO.: CV-23-00000014-0000
DATE: 2024/01/09

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

TATJANA GREEN and PAUL DUTRA
Applicants

- and -

MARIA CRISTINA GARDEAZABAL
Respondent

REASONS FOR JUDGMENT

The Honourable R. J. Harper

Released: January 9, 2024