

CITATION: Gentles v. Lynch, 2024 ONSC 4825
BARRIE COURT FILE NO.: CV-22-00000326
DATE: 20240903

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: RALLION GENTLES, Plaintiff

AND:

SHEREDA LYNCH and TERRENCE REEFER, Defendants

BEFORE: The Honourable Mr. Justice C.F. de Sa

COUNSEL: Matthew Thomson and Andrew Francis, Counsel for the Plaintiff

Mark Klaiman, Counsel for the Defendant, Shereda Lynch

HEARD: In Writing

COSTS ENDORSEMENT

- [1] The plaintiff seeks his costs of this motion in the amount of \$20,000 as against the defendant, Shereda Lynch (“Lynch”) as she opposed the motion. The plaintiff is not seeking costs against the co-defendant Mr. Reefer, who consented to the relief sought.
- [2] The plaintiff submits that he was unquestionably the successful party on the motion.
- [3] Although the court declined to grant alternate relief proposed by the plaintiff to extend Ms. Lynch’s prior undertaking not to deal with the Property, the plaintiff obtained his desired result through the issuance of a CPL. This issue was of central importance to the plaintiff.
- [4] In addition to compensating the prevailing party, three 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.
- [5] The plaintiff’s costs of this motion totalled \$23,257.83 on a substantial indemnity basis. The plaintiff submits that some measure of substantial indemnity is appropriate given Ms. Lynch’s unreasonable opposition to the motion. It is for this reason \$20,000 is being sought. Alternatively, costs on a partial indemnity basis of \$15,668.98 should be awarded.
- [6] The defendant submits that costs should be in the cause. Even though a CPL was obtained, the plaintiff was unsuccessful in its motion to vary the order of Justice Vallee.
- [7] There was nothing in Ms. Lynch’s conduct which tended to lengthen the proceedings.
- [8] If the plaintiff is not successful in the action where he is claiming an interest in land, a cost Order would reward him for bringing this Motion claiming an interest in the land which at

the end, he was found not to have. Thus, the proceeding he engaged in would have been an expense for no reason.

- [9] If he is successful, then he can seek his costs at the end of the day before the Trial Judge. His costs are secured by way of a Certificate of Pending Litigation.
- [10] The defendant also submits that the amount of time devoted to a Simplified Rule Motion, without cross examinations was excessive. In total, they spent 54 hours to argue a Motion, which took 1.5 hours. By contrast, Ms. Lynch's counsel spent 5.5 hours.
- [11] In the alternative, if the court is inclined to award costs, the defendant submits that costs should be fixed in the sum of \$5,000.00.

Analysis

- [12] Costs awards under section 131 of the *Courts of Justice Act*, R.S.O. 1990, c C. 43, are highly discretionary.
- [13] Rule 57.01 of the *of Civil Procedure*, R.R.O. 1990, Reg. 194, sets out the factors to be considered including the amount of costs an unsuccessful party would expect to pay and the complexity of the proceeding. Assessing costs is not simply a matter of arithmetic, where dockets are tabulated. The overarching principle is that the court's assessment should be *fair and reasonable* in light of all the circumstances.: see *Beaver v. Hill*, 2018 ONCA 840; *Boucher v. Public Accountants Council for the Province of Ontario* (2004), 2004 CanLII 14579 (ON CA), 71 O.R. (3d) 291 (C.A.); and *Moon v. Sher* (2004), 2004 CanLII 39005 (ON CA), 246 D.L.R. (4th) 440 (C.A.).
- [14] Section 57.01 provides as follows:

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; and

(i) any other matter relevant to the question of costs. R.R.O. 1990, Reg. 194, r. 57.01 (1); O. Reg. 627/98, s. 6; O. Reg. 42/05, s. 4 (1); O. Reg. 575/07, s. 1.

Application to the Facts of the Case

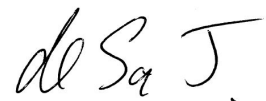
[15] The plaintiff was successful on the motion.

[16] The amount of costs sought on the motion are not unreasonable. However, given the amounts involved in the litigation, the amount sought would be disproportionate.

[17] I agree with the plaintiff that an amount of costs is warranted. The motion should have been resolved on consent.

[18] Having regard to all the circumstances, I will order the defendant, Shereda Lynch, to pay costs in the amount of \$14,000.

[19] This amount is to be paid within 30 days and will accrue post-judgment interest in accordance with s. 129(1) of the *Courts of Justice Act*.



Justice C.F. de Sa

Date: September 3, 2024