

ONTARIO SUPERIOR COURT OF JUSTICE (TORONTO REGION)
CIVIL ENDORSEMENT FORM

BEFORE	Robert Centa J.	Court File Number: CV-23-00694740-0000
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Title of Proceeding:

2771656 Ontario Inc. Plaintiff

-V-

T-Dot Auto Collision Inc. operating as Cannaverse and Yalini Manoharan, a.k.a.
Yalini Ruthiran Defendants

Case Management: <input type="checkbox"/> Yes If so, by whom:	X No
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Participants and Non-Participants:

Party	Counsel	E-mail Address or telephone	Participated
1) Plaintiff	Robert B. Macdonald Natalia Sidlar	rmacdonald@foglers.com nsidlar@foglers.com	Y
2) Defendants	Oleg M. Roslak	oroslak@himprolaw.com	Y

Date Heard: November 6, 2024

Nature of Hearing (mark with an "X"):

Motion Appeal Case Conference Pre-Trial Conference Application

Format of Hearing (mark with an "X"):

In Writing Telephone Videoconference In Person

Relief Requested:

Costs of the proceeding.

Disposition made at hearing or conference (operative terms ordered):

The defendants are ordered to pay \$50,000 in costs of the action to the plaintiff within 30 days of this order.

Brief Reasons, if any:

On October 15, 2024, I granted the plaintiff's motion for summary judgment. I awarded the plaintiff \$137,190.21 in damages for breach of its lease with the defendant. I also dismissed the defendant tenant's counterclaim and held that the individual defendant was liable under a guarantee in favour of the plaintiff. The parties were unable to resolve the issue of costs.

The plaintiff seeks its costs on a substantial indemnity scale, fixed in the amount of \$51,324.24. The defendants submit that I should award costs on a partial indemnity scale fixed in the amount of \$25,000, inclusive of taxes and disbursements.

Applicable legal principles

Fixing costs is a typically a discretionary decision under s. 131 of the *Courts of Justice Act*, R.S.O. 1990, c C.43. In exercising my discretion, I may consider the result in the proceeding, any offer to settle or to contribute made in writing, and the factors listed in rule 57.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg 194. These factors include but are not limited to:

- (i) the result in the proceeding;
- (ii) 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;
- (iii) 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;
- (iv) the amount claimed, and the amount recovered in the proceeding;
- (v) the complexity of the proceeding;
- (vi) the importance of the issues; and
- (vii) the conduct of any party that tended to shorten or lengthen unnecessarily the duration of the proceeding.

Rule 57.01(1)(f) provides that the court may also consider "any other matter relevant to the question of costs."

However, the costs that the plaintiff seeks in this case are payable as a matter of contract, not as an exercise of judicial discretion. Subsection 43(12) provides as follows:

If the Lessor employs a solicitor to correspond with the Lessee in respect of a default, or to commence an action for the collection of rent herein reserved or any portion thereof, or any other sum hereunder, including but not limited to Additional Rent, or to compel the performance of any of the terms, conditions, covenants or provisions contained herein, then the Lessor shall be entitled to

collect from the Lessee all reasonable solicitor's fees on a solicitor-client basis as if these were arrears of rent under this lease.

This contractual clause is enforceable in the same way as the rest of the provisions of the lease: *Royal Bank v Edna Granite & Marble Inc.*, 2017 ONSC 3377, at paras. 16 and 17. I am not permitted to reduce the scale of costs on the basis my view of what is fair and reasonable. I may only reduce the amount claimed if it included amounts that were not appropriate or because excessive rates or time were charged. As the Court of Appeal for Ontario recently held in *Everest Finance Corporation v. Jonker*, 2023 ONCA 87, at para. 8:

In a similar vein, the motion judge reduced the amount that the appellant sought for costs from \$34,846.85 to \$20,000. The motion judge said that she did so in the exercise of her "discretion". The motion judge does not appear to have appreciated that her discretion in awarding costs did not extend to changing the contractual terms of the mortgage. The mortgage provided for full indemnity costs for steps taken to recover the amount due. While the motion judge might vary the amount sought if it included amounts that were not appropriate, or because excessive rates or time were charged, she did not have the authority to essentially change the contracted full indemnity costs provision to a partial indemnity one. That is not an authority included under the well-established parameters of a judge's discretion when it comes to awarding costs.

I accept the plaintiff's submission that s. 43(12) applies before and after the termination of the lease. Read in context, and alongside s. 43(6)(a) and (b), 43(7), and 43(9), I am satisfied that the lease provides that the plaintiff is entitled in this case to recover all reasonable legal fees on a solicitor-client basis.

In my view the amounts claimed are reasonable. I see no reason to exclude the costs incurred by the plaintiff for its motion for substituted or validated service. Associate Justice Josefo ordered that the costs of the motion be in the cause, and I see no reason why the plaintiff should not recover them at this time. If the defendants wished to avoid such costs, they should not have been found, as they were found by Associate Justice Josefo to be "likely evading or avoiding being served."

I do not accept the defendants' submission that the plaintiff's costs so vastly exceed the defendants' costs as to be unreasonable. While I commend counsel for the defendants for the efficiency of their work, I do not see any evidence of over-lawyering by counsel for the plaintiff.

Similarly, I do not think the calculation errors by the plaintiff, or the fact that it did not recover 100% of the claim justifies a significant reduction in costs. The plaintiff was overwhelmingly successful.

I find that the plaintiff's costs were reasonable, and it is fair and reasonable for the defendant to pay \$50,000 in cost of the action, inclusive of legal fees, disbursements, and taxes: *Boucher v. Public Accountants Council (Ontario)* (2004), 71 O.R. (3d) 291 (C.A.), at paras. 26 and 37. The defendants are

jointly and severally liable for that amount, which they shall pay to the plaintiff within 30 days of the date of this order.

Additional pages attached: Yes X No

November 6, 2024



Signature of Judge