

CITATION: Arias v. Brennan, 2020 ONSC 1976
COURT FILE NO.: CV-17-130822
CV-17-130559
DATE: 20200330

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
Maria Eugenia Guevara Arias) Charles Baker, for the Plaintiff
)
) Plaintiff)
)
- and -)
)
Milton Eduardo Sanchez Brennan) Alexandra Forsyth-Sells, for the Defendant
)
) Defendant)
)
)
)
) **HEARD:** In Writing

COSTS ENDORSEMENT

DILUCA J.:

- [1] On March 16, 2020, I released my Reasons for Decision in this matter. I have since received and considered the helpful written costs submissions of both parties.
- [2] As set out in my Reasons, Ms. Arias was the successful party on this action/application. She was awarded complete ownership of the home she previously shared titled to with Mr. Sanchez.
- [3] In her costs submissions, Ms. Arias indicates that she has paid her lawyer \$49,310.61 in fees, disbursements and HST, for his work on this matter. Included in her submissions are dockets and a Bill of Costs. Ms. Arias seeks partial indemnity (65%) in relation to legal fees and full indemnity for the disbursements incurred. The total sought is \$41,792 all inclusive, which is approximately 74%. Ms. Arias paid her lawyer \$310 per hour. The claimed partial indemnity rate is based on 65% of an hourly rate of \$400 per hour.
- [4] Mr. Sanchez argues that he should pay \$25,000 all inclusive. While he argues that he would not have reasonably expected to pay over \$40,000 in costs, he has not provided a bill of costs or dockets showing costs incurred on his side of the litigation.

[5] Section 131 of the *Courts of Justice Act* confers a broad discretion to award costs. Pursuant to Rule 57.01(2) of the *Rules of Civil Procedure*, a presumption exists that costs should be awarded to the successful party. Rule 57.01 sets out factors the court may take into consideration when the court exercises its discretion to award costs.

[6] In *Serra v. Serra*, [2009] O.J. 1905 (C.A.), the Court of Appeal confirmed that the modern costs rules are designed to encourage and foster three fundamental purposes; namely, to partially indemnify successful litigants for the costs of litigation, to encourage settlement and to discourage and sanction inappropriate behaviour by litigants, bearing in mind that the award should reflect what the court views as a fair and reasonable amount that should be paid by the unsuccessful party.

[7] Further, in *Boucher et al. v. Public Accountants Council for the Province of Ontario et al.*, (2004) 71 O.R. (3d) 291 at para. 26, the Court of Appeal explained:

The express language of rule 57.01(3) makes it clear that the fixing of costs is not simply a mechanical exercise. In particular, the rule makes clear that the fixing of costs does not begin and end with a calculation of hours times rates. The introduction of a costs grid was not meant to produce that result, but rather to signal that this is one factor in the assessment process, together with the other factors in rule 57.01. Overall, as this court has said, the objective is to fix an amount that is fair and reasonable for the unsuccessful party to pay in the particular proceeding, rather than an amount fixed by the actual costs incurred by the successful litigant.

[8] Considering and balancing these factors together, I am of the view that a reasonable and proportionate costs award is \$32,775.00 all inclusive. I reach this conclusion based on the following reasons:

- a. In terms of proportionality, the issue at stake was the half ownership interest in a home that is now valued at approximately \$550,000. The litigants are of modest means and the issue at stake would have been significant to both parties.
- b. The proposed rate of indemnification should be based on the actual hourly rate that Ms. Arias paid her lawyer, which is \$310 per hour. It is not appropriate to use the rate of \$400 per hour as that is not what was paid. Moreover, when the proposed indemnification rate of 65% is considered, it equates to an hourly rate of \$260 per hour (based on the purported rate of \$400 per hour), which is 84% of the \$310 per hour actually charged.
- c. The dockets provided suggest that the hours dedicated by Ms. Arias' counsel are fair and reasonable in view of the complexity of the issues raised and the length of the proceedings.

- d. I do not accept Mr. Sanchez's submission that he would not have reasonably expected fees in the range requested. This submission is difficult to accept in the absence of some material showing what he actually expected Ms. Arias' costs would be. Oftentimes, this is done by tendering dockets of fees and disbursements incurred in defending the action. However, I have nothing in that regard.

- e. This is not a case where formal or informal offers to settle impact the costs analysis. Ms. Arias was significantly more successful at trial than she would have been if she had accepted any of the prior offers to settle. She cannot be faulted for failing to resolve the matter earlier. While her failure to agree to mediation is not be encouraged, in view of the outcome of the litigation, I do not see it as a basis upon which to reduce the costs she should receive.

[9] The costs shall be paid within 30 days of this date of this Endorsement.



Justice J. Di Luca

Date: March 30, 2020