

**CITATION:** Mounia v. Haddad, 2019 ONSC 5438  
**NEWMARKET COURT FILE NO.:** FC-16-051243-00  
**DATE:** 20190919

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**FAMILY COURT**

**BETWEEN:**

Alami Hassanio Mounia

Applicant

– and –

Fadi Jamil Haddad

Respondent

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)  
) Paul C. Buttigieg, for the Applicant  
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) Charles Baker, for the Respondent  
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) **HEARD:** In writing

**RULING ON COSTS**

**SUTHERLAND J.:**

**Overview**

- [1] On April 24, 2019, I heard the continuing motion with respect to the Order of McDermot J. dated May 31, 2018 granting a preservation order in favour of the respondent.
- [2] My decision was released on May 22, 2019. I ordered, amongst other relief, the preservation order to continue until further order of the court.
- [3] In my decision, I indicated that if the parties cannot resolve costs, I will accept written submissions.
- [4] I have now received submissions from the applicant and respondent.
- [5] Below is my decision on costs.

### **Legal Principles**

- [6] Section 24(1) of the *Family Law Rules*<sup>1</sup>, sets out a presumption that costs should be awarded to the successful party. The Court of Appeal in the decision of *Serra v. Serra*<sup>2</sup> and *Mattina v. Mattina*<sup>3</sup> 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] The Court of Appeal also indicated in the decisions of *Boucher et al. v. Public Accountants Council for the Province of Ontario*<sup>4</sup> and *Delellis v. Delellis*<sup>5</sup>, that when assessing costs it is not simply a mechanical exercise. It is not simply a calculation of hours spent and hourly rates but the court is to take a proportional methodology. The overall objective is to fix an amount of costs that is fair and reasonable for the unsuccessful party to pay in the particular circumstances of the case, rather than the actual costs incurred by the successful litigant.
- [8] Partial indemnity for costs is the norm unless there is good reason to award a higher level of costs. The award of substantial indemnity for costs is rare and the award of full recovery of costs is even rarer.<sup>6</sup>
- [9] Rule 24 is the governing rule when dealing with costs. This rule sets out numerous factors including divided success and the behaviour of the parties that the court may take into consideration when deciding costs.
- [10] Rule 18 set outs that the court may take into consideration any offers to settle served even when the offer to settle does not comply fully with the rule.

### **Positions of the Parties**

- [11] The applicant submits that even though the respondent was the successful party, there should be no order as to costs. In the alternative, the applicant requests that costs be reserved to the trial judge “who will ultimately decide the central unresolved and hotly contested issue in this proceeding: the correct date of separation.” The applicant contends that the respondent is in breach of the order of Kaufman J. dated April 13, 2019 for his wilful refusal or failure to pay child support to the applicant. If the court is contemplating granting an amount for costs, the amount requested by the respondent is excessive and

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<sup>1</sup> O. Reg., 114/99

<sup>2</sup> [2009] O.J. 1905 (C.A.)

<sup>3</sup> 2018 ONCA 867

<sup>4</sup> [2004] No. 2634 (C.A.)

<sup>5</sup> [2005] O.J. No. 4345

<sup>6</sup> *Blank v. Micallef*, 2009 CarswellOnt 6790 (SCJ)

includes time incurred that was not incurred or was incurred due to the inappropriate conduct of the respondent and such charges should not be granted.

- [12] The respondent submits that he is the successful party and is deserving of costs. He seeks costs in the amount of \$20,000. He contends that the amount requested is reasonable given the work performed. The applicant fought the preservation order since the date it was granted by Mc Dermot J. The conduct of the applicant forced the respondent to incur substantial legal costs. The applicant obtained a divorce order and once the order was obtained immediately had the matrimonial home designation discharged from title knowing very well the respondent was making a claim for equalization of net family property and that there was a dispute on the date of separation. The respondent reminds the court the portion of the endorsement of Mc Dermot J. quoted in my May 22, 2019 decision at paragraph 4. Thus, the respondent argues that the costs requested is less than the actual time incurred and that the amount requested is fair and reasonable based on the conduct of the applicant.

### Analysis

- [13] I accept the respondent's contention that he is deserving of costs. It is not disputed that the respondent was the successful party.
- [14] The actions of the applicant with respect to the divorce order and then the discharge of the matrimonial home designation, as stated by Mc Dermot J. is concerning.
- [15] In addition, the applicant's continual opposition to the preservation order of Mc Dermot J. is concerning. The applicant knew very well the issues in this proceeding and particularly the claim for equalization of net family property. Nonetheless, the applicant took the position that the order of McDermot J. must be set aside.
- [16] The respondent did serve an Offer to Settle dated April 16, 2019 upon the applicant. In that Offer to Settle, the respondent agreed to settle the motion by the continuation of the McDermot J. order dated May 31, 2018 and costs of \$5,000 and if not accepted until after 4:00 p.m. on April 18, 2019 but before the commencement of the motion, an additional costs of \$1,500 plus HST will have to be paid in 30 days.
- [17] The applicant served the respondent with an Offer to Settle dated April 13, 2019. In that Offer to Settle the applicant offered that the order of Mc Dermott J. continue with costs reserved to the trial judge.
- [18] As stated above, the Ontario Court of Appeal has stated clearly 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.
- [19] I find the conduct of the applicant and her failure to accept the Offer to Settle of the respondent deserves a cost award to discourage and sanction inappropriate behaviour. I

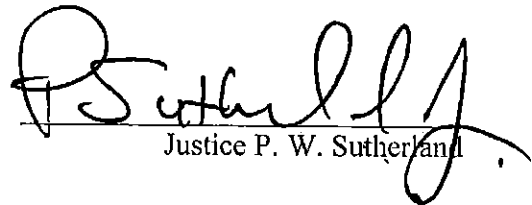
find that a fair and reasonable amount in costs for the applicant to pay the respondent in the circumstances is the amount of \$18,190.07. I calculate the amount as follows: full costs of Mr. Baker plus disbursements: \$13,190.07, plus \$5000 for costs claimed for previous counsel.

[20] I have taken into consideration the submissions of the applicant on the time charged by the respondent, the Offer to Settle of the applicant and the fact that the respondent is in arrears of child support. In no way do I condone the conduct of the respondent in being in arrears of child support but the action of the applicant and the legal fees incurred by the respondent due to the actions of the applicant, I suspect, is a contributing factor. The Offer to Settle of the applicant, that costs be reserved to the trial judge, fails to appropriately consider the costs incurred by the respondent due to the conduct of the applicant, which the court does not condone and sanctions.

[21] I suspect that the respondent will satisfy his arrears in child support forthwith.

**Disposition**

[22] I order that the applicant shall pay to the respondent costs in the amount of \$18,190.07 payable forthwith.

  
Justice P. W. Sutherland

**Released:** September 19, 2019