

CITATION: [REDACTED] v. Bechara, 2018 ONSC 3737
COURT FILE NO.: CV-14-507723
DATE: 20181120

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: [REDACTED], Plaintiff

AND:

Patrick H. Bechara, Defendant

AND:

[REDACTED] Third Party

BEFORE: Pollak J.

COUNSEL: *Hashim Syed*, for the Plaintiff and Third Party

Bahman Azimi, for the Defendant

HEARD: December 4-8, 11-13, 17, 2017

COSTS ENDORSEMENT

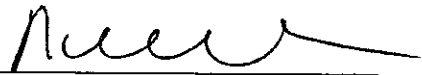
[1] I have reviewed the submissions of the parties with respect to costs and have considered the factors set out in the Rules and in the case of *Boucher v. Public Accountants Council for the Province of Ontario* (2004), 71 O.R. (3d) 291 (C.A.). I agree with the submissions of the Plaintiff and Third Party that they were the successful parties at trial.

[2] At trial, counsel for the Defendant submitted that \$70,000 in costs including tax and disbursements would have been reasonably incurred by the Plaintiff and the Third Party on a partial indemnity basis.

[3] The Plaintiff and Third Party made an offer of settlement to the Defendant on June 8, 2017 for the amount of \$51,000. At trial, the Plaintiff and Third Party were awarded the amount of \$53,535.30. The Defendant argues that they were only partially successful as they had claimed damages of \$100,000 and were awarded a lesser amount of \$53,535.30. He submits that an offer to settle should not be a determinative factor when assessing costs on a substantial indemnity scale. I find that in the circumstances of this case, for the reasons that are set out in detail in the cost submissions of the Plaintiff and Third Party, namely, the position of the Defendant taken at trial with respect to his continued denial that he had the car towed, and his reliance on expert evidence, increased the complexity and the length of trial, the award of costs as requested by the Plaintiff and Third Party are justified. The Plaintiff and Third Party should be awarded their costs on a partial indemnity basis to the date of the offer and on a substantial indemnity basis thereafter. Although this action was brought under the Simplified Rules, I find

that the costs of the Plaintiff and Third Party were increased by the Defendant's litigation strategy and therefore reasonably incurred. While I agree with the Defendant that such conduct may not, in and of itself, justify an award of costs on a substantial indemnity basis throughout, I do find that considering the additional factor of the offer of settlement, an award of \$72,537.53 for costs (including all disbursements and applicable taxes) should be made to the Plaintiff and Third Party.

[4] Although these costs may be disproportionate to the amount of damages that have been awarded, the reason for the disproportionality is due to the Defendant's conduct. It would not be just and equitable to allow the Defendant to rely on his own conduct to reduce the cost award that should properly be made in favour of the Plaintiff and Third Party. To conclude, I award costs of \$72,537.53 to be paid by the Defendant to the Plaintiff and Third Party.



Pollak J.

Date: November 20, 2018