

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Danilo Jovkovic, Applicant

AND:

Linda Middleton, Respondent

His Majesty in Right of Ontario, Respondent

BEFORE: Justice Owen Rees

COUNSEL: Yan David Payne & James R.D. Clark, for the Applicant

Michael J. Prestell & Connor J.D. Barbeau, for the Respondent (Linda Middleton)

Rina Li, for the Respondent (His Majesty in Right of Ontario)

HEARD: In writing

COSTS ENDORSEMENT

[1] The application came before me for a hearing on July 21, 2023. The parties agreed to the applicant's right of way and to his ancillary right to modify the right of way for vehicular access, which were the core issues on the application. I dismissed the additional relief requested by the applicant and the respondent. This is my decision on costs, which I heard in writing.

Position of the parties

[2] The applicant seeks costs on a substantial indemnity basis, amounting to \$37,184.27. The applicant says the respondent's conduct was reprehensible. He argues that the respondent refused to make any meaningful concessions. He argues that the applicant did as well as his three Rule 49 offers to settle. At my direction, the applicant filed a revised bill of costs to remove any amounts attributable to the portion of the application against the Crown.

[3] The respondent argues that she should be awarded costs of \$5,000 or that no costs should be awarded. The respondent says her conduct was not reprehensible. She says she only later

learned of the right of way and was settlement-focused after serving her first offer to settle on May 18, 2023. She also argues that success was divided. She was concerned that the applicant would act without regulatory approval. Finally, she is critical of the applicant's conduct in cutting down trees and of the work he had done on the right of way over her property.

Analysis

[4] Given the respondent's position on the main relief sought by the applicant, it was perplexing that this matter came before the court at all. The respondent was essentially asking the court to direct the applicant to abide by any applicable regulatory requirements in exercising his proprietary rights. But no regulatory issues were properly before the court; the issues on the application related solely to the parties' proprietary rights.

[5] I have considered the costs submissions, offers to settle, and criteria in Rule 57.01. The applicant did as well as his three Rule 49 offers to settle. The respondent's position led the applicant to incur needless costs. I expressly declined to make any determination regarding regulatory approvals. In my endorsement, I simply stated what was obvious, which is that the applicant is required to abide by any applicable law in exercising his proprietary rights. That observation was not divided success in favour of the respondent.

[6] Accordingly, I have determined that it is fair and reasonable to award the applicant partial indemnity costs up to his first offer to settle and substantial indemnity costs thereafter. I disagree that the applicant conducted himself in the proceedings in way that calls for reducing the costs award. However, I reduce the amount awarded to reflect the overall reasonableness of the costs claimed.

[7] The respondent shall pay the applicant costs of \$28,000.



Justice Owen Rees

Date: September 25, 2023

COURT FILE NO.: CV-22-29

DATE: 2023/09/19

ONTARIO

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ENDORSEMENT

Justice Owen Rees

Released: September 25, 2023