

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

VISTA SUDBURY HOTELS INC. carrying
on business as RAINBOW VALUE
CENTRE and VISTA SUDBURY
COMPLEX INC.

Plaintiffs

– and –

THE OSHAWA GROUP LIMITED,
OSHAWA HOLDINGS LIMITED, and
ZELLERS INC.

Defendants

Barry Weintraub, for the Plaintiffs

Nicholas Avis, for the Defendants

Heard in writing

REASONS FOR DECISION - COSTS

CULLIN J.

[1] This matter appears before me to address the issue of costs.

[2] This action arises in the context of a lease agreement between the plaintiffs and the defendants. On May 15, 2004, the defendants closed their retail operations in the Rainbow Value Centre. The plaintiffs subsequently commenced proceedings alleging that the early closure occurred in violation of the lease agreement and that they sustained damages as a result.

[3] This action was the subject of lengthy legal proceedings. The trial of the action was bifurcated. The liability phase of the trial was conducted over three days in 2017. The liability decision was subsequently overturned on appeal in favour of the plaintiffs, and the issue of costs was reserved to the judge hearing the damages phase of the trial. The damages phase of the trial was subsequently conducted over seven days in 2023 and 2024, in addition to written arguments.

[4] Following the damages phase of the trial, I awarded damages to the plaintiffs in the amount of \$580,600.63, plus prejudgment interest in the amount of \$352,973.37. The prejudgment interest was fixed pursuant to an agreement between the parties.

[5] In my reasons for decision, I invited written submissions regarding costs. I have now received submissions from both the plaintiffs and the defendants.

[6] The plaintiffs claim partial indemnity costs to February 7, 2017, and substantial indemnity costs thereafter under Rule 49.10, on the basis of an offer to settle for \$950,000 inclusive of damages, interest, and costs. They seek costs in the total amount of \$908,618.60, inclusive of fees, disbursements and taxes.

[7] The defendant Zellers Inc. amalgamated with Hudson's Bay Company ("HBC") in or around 2014. HBC was granted protection from its creditors pursuant to an order of the Ontario Superior Court of Justice (Commercial List) dated March 21, 2025. Costs submissions were made on the defendants' behalf by HBC's insolvency counsel. They take the position that HBC is stayed from making any payment to the plaintiffs, including costs. They take no position regarding the quantum or appropriateness of the costs claimed by the plaintiff given counsel's limited access to and involvement with the defendants' litigation file.

[8] The plaintiffs ask that the Court fix costs regardless, in order to crystallize the plaintiffs' claim against the defendants.

[9] Pursuant to s. 131 of the *Courts of Justice Act*, R.S.O. 1990. c.C.43, the award of costs is solely within the discretion of the Court.

[10] An award of costs must reflect an amount that is fair and reasonable having regard to the individual circumstances of a case: *Boucher v. Public Accountants Council (Ontario)*, 2004 CanLII 4579. Costs are intended to indemnify a successful party for the expense of being compelled to seek the assistance of the Court to resolve a dispute: *British Columbia (Minister of Forests) v. Okanagan Indian Band*, 2003 SCC 71, paras. 19-21.

[11] The factors to be applied by the Court in exercising its discretion are enumerated in Rule 57.01 of the *Rules of Civil Procedure*. As a general rule, costs are awarded having regard to the principle of indemnity; that is, they are payable to the successful party by the unsuccessful party. Other factors to be considered by the Court include: (i) the amount claimed and recovered in the proceeding; (ii) the complexity of the proceeding; (iii) the importance of the issues; (iv) the conduct of the parties; and, (v) whether any step was improper, vexatious or unnecessary.

[12] Offers to settle exchanged between the parties during the proceeding are also a relevant consideration. Pursuant to Rule 49.10, subject to certain conditions, a party who obtains a judgment as or more favourable than their offer to settle is entitled to partial indemnity costs up to the date of the offer and substantial indemnity costs from the date of the offer.

[13] It is clear that the plaintiffs made an offer to settle, which they exceeded at trial. There is no evidence of an offer to settle by the defendants. I find that it is appropriate to award costs having regard to Rule 49.10.

[14] The plaintiffs submitted a Bill of Costs in support of their position on costs. Overall, I find that the hours and fees claimed for legal services provided are reasonable. The Bill of Costs clearly distinguishes between fees for services prior to the offer to settle and fees for services following the offer to settle.

[15] With respect to the disbursements, the courier charge of \$1,914.27 to “return file to client” was not, in my view, an appropriate assessable disbursement. Otherwise, I was satisfied that the disbursements were reasonable, particularly having regard to the extent of the documentary record filed and the travel from Toronto to Sudbury for the bifurcated hearings.

[16] For these reasons, I order that the defendants shall pay the costs of this action to plaintiffs totalling \$906,704.33, which are allocated as follows:

- a. The sum of \$54,745.90, inclusive of HST, representing partial indemnity costs to the date of the plaintiffs’ offer to settle;
- b. The sum of \$711,867.09, inclusive of HST, representing substantial indemnity costs from the date of the plaintiffs’ offer to settle;
- c. The sum of \$140,091.34, inclusive of HST, representing disbursements.

Cullin J.

Released: July 6, 2026

CITATION: Vista Sudbury Hotels Inc. v. The Oshawa Group Limited., 2026 ONSC 3953

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