

[3] Do claims legal costs in the amount of \$58,499.81 against the Defendant, Tim Sinclair (“Sinclair”). Do seeks costs on a partial indemnity basis from the commencement of his claim until February 18, 2025 (\$22,168.93), and on a substantial indemnity basis (\$31,071.41) hence, plus disbursements of \$5,259.47.

[4] Sinclair argues that, since success was divided, the parties should bear their own costs.

[5] On February 18, 2025, Do made an offer to settle the action for \$752,416 plus \$50,000 for costs, with no terms relating to the fraudulent misrepresentation or *BIA* declaration.

[6] In total, Do would have settled the case for \$802,416 in principal, interest and costs. In my decision, I found Sinclair liable for \$3,627,988.75 for the total owing in principal and interest on the promissory note, to December 31, 2024; and \$1,884.87 per diem to the date of judgment (being a further \$804,839.49).

[7] Under the *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 131(1), there is broad discretion in determining costs. Rule 57.01(1) of the Rules of Civil Procedure lists factors to be considered. The overall objective is to fix an amount that is fair and reasonable for the unsuccessful party to pay in the particular circumstances of the proceeding. Costs are presumptively awarded to the successful party in a proceeding.

[8] Do urges the Court to not approach the costs issue as though success was purely divided between the parties. I agree, to an extent. While I did not grant Do’s requested relief on some legal issues – such as fraudulent misrepresentation – Do prevailed on the motion in the sense that he was awarded a significant sum of money, more than his offer.

[9] That said, I conclude that a fair recognition of the monetary value of the judgment is to grant Do some costs, i.e., not order the parties to bear their own costs. I do not agree that recognition of Do’s success requires costs at a substantial indemnity rate.

[10] I have reviewed Do’s Bill of Costs. I find the work and rates contained therein reasonable.

[11] In the circumstances, I find it fair and reasonable to fix costs at \$40,000. I find that amount to be within the reasonable contemplation of the Defendant.

ORDER

[12] In conclusion, I make the following order:

- a. The Defendant, John Timothy Sinclair, shall pay costs fixed at \$40,000 to the Plaintiff, Paul Phuong Do.

Mathen J.

Released: May 12, 2026

CITATION: *Phuong Do v. Sinclair*, 2026 ONSC 2775
COURT FILE NO.: CV-23-00707988-0000
DATE: 20260512

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

PAUL PHUONG DO

Plaintiff

– and –

JOHN TIMOTHY SINCLAIR, AKA Sinclair

Defendant

COSTS DECISION

Mathen J.

Released: May 12, 2026