CITATION: Abouzeid v. eXp Realty of Canada Inc et al., 6302
COURT FILE NO.: CL-26-00000014-0000
DATE: 20261109

2026 CanLII 119507 (ON SC)

SUPERIOR COURT OF JUSTICE – ONTARIO
COMMERCIAL LIST

RE: IBRAHIM HUSSEIN ABOUZEID, Plaintiff

AND:

EXP REALTY OF CANADA, INC. AND EXP WORLD HOLDINGS, INC., Defendants

BEFORE: Cavanagh J.

COUNSEL: *Glenn Brandys and Aman Chaggar*, for Ibrahim Hussein Abouzeid (Responding Party)

Vera Toppings, Daniella Murynka, and Kirsten Sullivan, for the Defendants (Moving Party)

HEARD: In Writing

COSTS ENDORSEMENT

[1] In this action, two motions, one brought by each defendant, were heard on the same day. This is my endorsement with respect to costs of these two motions.

Costs of motion by eXp Realty of Canada, Inc. ("eXp Canada") to stay action under Arbitration Act

[2] eXp Canada was the successful party on its motion to stay the action against it based on the *Arbitration Act*.

[3] Exp Canada seeks costs of this motion on a partial indemnity scale to the date of its offer to settle, March 10, 2026, and on a substantial indemnity scale from the date of its offer to settle. The total amount claimed is $130,028.05.

[4] In its offer to settle, eXp Canada offered to resolve Mr. Abouzeid's claims through arbitration, with all costs accrued to date to be dealt with in the cause, and on the express agreement that any arbitrator appointed would have the jurisdiction to consider Mr. Abouzeid's contemplated injunction. This offer to settle was not accepted.

[5] The offer to settle does not trigger an award of costs on a substantial indemnity scale under the Rules. There are no other factors which justify an award of costs on a substantial indemnity scale. Costs should be awarded on a partial indemnity scale.

[6] The amount of costs for eXp Canada on a partial indemnity scale according to its Amended Costs Outline is $123,104.06 calculated based on 60% of the actual rates charged. The fees claimed on this basis, excluding HST, are $107,446.65.

[7] Mr. Abouzeid submits that the costs claimed are significantly inflated and that any costs award should be dramatically reduced.

[8] Mr. Abouzeid relies on the fact that his partial indemnity costs for this motion were $41,864.93. He submits that the amount claimed far exceeds his reasonable expectations. He submits that in other cases involving a motion to stay an action based on an arbitration agreement, costs awarded were much lower. Mr. Abouzeid submits that he should not be responsible for the fact that eXp Canada used three lawyers for activities in this motion. He submits that too much time is claimed and that the cross-examination of a law clerk was unnecessary and improper, where the affidavit attached documents and was without controversy. Mr. Abouzeid submits that the motion was not complex and that the legal principles were settled.

[9] Mr. Abouzeid submits that costs should be allowed on a partial indemnity scale in an amount equivalent to the costs he would have claimed if successful ($41,864.93).

[10] The motion was supported by an affidavit of the managing director of eXp Canada (4 pages) and an affidavit of an articling student at the law firm that represents eXp Canada attaching an email. Mr. Abouzeid filed a responding affidavit from a law clerk employed by his then legal counsel. Exp Canada filed a reply affidavit from the articling student (5 paragraphs). The law clerk was cross-examined and the cross-examination took 30 minutes. A factum and a reply factum were filed.

[11] Although there were factual matters in dispute, the motion was not unduly complex. The legal principles were not unsettled. I accept that the motion raised an issue of importance to the parties.

[12] In *Boucher v. Public Accountants Council for the Province of Ontario*, 2004 CarswellOnt 2521 (C.A.) the Court of Appeal, at para. 26, held that the fixing of costs is not a mechanical exercise and does not begin and end with a calculation of hours times rates. In addition to the factors in rule 57.01, the court must consider the amount that would be fair and reasonable for the unsuccessful party to pay in the particular proceeding, rather than the amount fixed by the actual costs incurred by the successful litigant. Rule 57.01(1)(0.b) provides that in exercising its discretion to award costs, the court may consider, in addition to other factors, the amount of costs that an unsuccessful party could reasonably expect to pay in relation to the step in the proceeding for which costs are being fixed.

[13] I have reviewed the Amended Costs Outline of eXp Canada. The number of hours spent by three lawyers for preparation of the motion record, cross examination of the law clerk, preparation of the reply record, preparation of facta, preparation for hearing, and attendance at the hearing are 78.8, 47.6, 3.7, 32.2, 27.5 and 11.2, respectively.

[14] When I consider the number of hours spent for these activities and the amount of fees claimed based on these hours (particularly for preparation of the motion record and preparation for the cross-examination of the law clerk) in the context of the complexity of the motion and the other

2026 CanLII 119507 (ON SC)

factors in rule 57.01, I conclude that the fees claimed fall outside of the range of fees that Mr. Abouzeid could reasonably be expected to pay if he were to be unsuccessful on this motion.

[15] When I consider the factors in rule 57.01 and the principle in *Boucher*, I conclude that the amount of fees that would be fair and reasonable and that Mr. Abouzeid would reasonably expect to pay if he were to be unsuccessful on this motion is $75,000. I fix fees in this amount.

Costs of motion by eXp World Holdings, Inc. ("eXp World") to stay action based on forum non conveniens

[16] eXp World was successful on its motion to stay Mr. Abouzeid's action against it on the basis of *forum non conveniens*.

[17] eXp World seeks costs of this motion on a partial indemnity scale to the date of its offer to settle and on a substantial indemnity scale after this date. The offer to settle was served on March 10, 2026. The amount of fees claimed is $115,983.75 (plus applicable taxes and disbursements).

[18] The offer to settle does not trigger an award of costs on a substantial indemnity scale under the *Rules of Civil Procedure*. There is no other conduct that justifies an award of costs on an elevated scale. I decline to award costs on an elevated scale and award costs on a partial indemnity scale.

[19] The amount of fees of eXp World for this motion on a partial indemnity scale is $97,636.35.

[20] eXp World accepts that the law governing the issue on this motion is not complex. It submits that Mr. Abouzeid created complexity by failing to plead his contracts with eXp World, by failing to address eXp World's arguments in his responding factum, by maintaining unreasonable positions without doctrinal foundation, and by failing to respect legal and evidentiary distinctions between eXp Canada's and eXp World's motions.

[21] eXp World's motion was supported by an affidavit from its CFO (five pages) and an affidavit from an articling student employed by its law firm attaching emails (two pages). Mr. Abouzeid relied on the affidavit from a law clerk at his former lawyer's firm. A reply affidavit from the articling student was filed. Cross-examinations of the law clerk and eXp World's CFO were conducted.

[22] Mr. Abouzeid submits that the fees claimed by eXp World are excessive and fall outside the range of fees that he would reasonably be expected to pay if he were to be unsuccessful on this motion. He relies, in part, on the costs claimed in his own costs outline for this motion ($42,671.75).

[23] Mr. Abouzeid submits that costs should be awarded on a partial indemnity scale in the amount equivalent to the costs in his costs outline ($42,671.75) which, he submits would be fair and reasonable for this motion.

[24] I have reviewed eXp World's Amended Costs Outline. I have concluded that the amount claimed for fees based on time spent by three lawyers (particularly for preparation of the motion record and preparation for cross-examinations) falls outside the range of fees that Mr. Abouzeid could reasonably expect to pay if he were to be unsuccessful on this motion.

2026 CanLII 119507 (ON SC)

[25] When I consider the factors in rule 57.01 and the principle in *Boucher*, I conclude that the amount of fees that would be fair and reasonable and that Mr. Abouzeid would reasonably expect to pay for this motion if he were to be unsuccessful is $70,000. I fix fees in this amount.

Disposition

[26] I fix costs of eXp Canada's motion on a partial indemnity scale to be paid by Mr. Abouzeid to eXp Canada in the amount of $86,284 comprised of fees of $75,000, HST on fees of $9,750, and disbursements of $1,534 (inclusive of applicable HST). These costs are to be paid within 30 days.

[27] I fix costs of eXp World's motion on a partial indemnity scale to be paid by Mr. Abouzeid to eXp World in the amount of $80,634 comprised of fees of $70,000, HST on fees of $9,100 and disbursements (including applicable taxes) of $1,534. These costs are to be paid within 30 days.

Cavanagh J.

Date: November 9, 2026

2026 CanLII 119507 (ON SC)