CITATION: 1916458 Ontario Limited v. Beaulieu, 2026 ONSC 6230
COURT FILE NO.: CV-16-6536
DATE: 2026/11/03

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ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
1916458 ONTARIO LIMITED, JOHNNIE MINERS AND LEANNE MINERS Plaintiffs	*Dhiren Chohan and Anderson Warren*, for the Plaintiffs
– and –	
DENIS BEAULIEU AND KAREN BEAULIEU Defendants	*Scott Fairley and Alex Daley*, for the Defendants
	HEARD: In chambers

REASONS FOR DECISION ON COSTS

ELLIES J.

OVERVIEW

[1] Following an eleven-day trial [1], the plaintiffs' claim against the defendants for breach of a share purchase agreement ("SPA") was dismissed and the defendants' counterclaim for the

[1] My reasons of June 6, 2026, incorrectly stated nine-days and failed to list June 10 and 11, 2025, as trial days.

balance owing under the SPA was allowed: *1916458 Ontario Limited v. Beaulieu*, 2026 ONSC 3503. The parties were invited to make written submissions on costs if they were unable to agree on the issue. I have received and reviewed the defendants' costs submissions. The time limit for receiving the plaintiffs' submissions has long since expired.[2]

[2] The defendants seek elevated costs in the amount of $274,303.73 based on the plaintiffs' conduct in the action.

[3] For the following reasons, costs are awarded at an elevated level in the all-inclusive amount of $250,000. As I will explain, while I agree that elevated costs should be awarded, they should not be awarded as though the plaintiffs' action proceeded only on meritless allegations of fraudulent conduct on the part of the defendants.

BACKGROUND

[4] The plaintiffs purchased a local heating, ventilation, and air-conditioning ("HVAC") company called DenKar Controls Inc. ("DenKar") in 2015 for $500,000. After they took over the business, they discovered a number of documents that they later relied on in an action commenced in July 2016. In the action, the plaintiffs claimed damages of $500,000 for breach of contract and for fraudulent misrepresentation. In addition, they sought special damages as well as punitive and exemplary damages in the amount of $100,000 each.

[5] In their statement of claim, the plaintiffs alleged that the defendants fraudulently misrepresented the state of DenKar's business by, among other things, failing to disclose that Denis Beaulieu's health was failing, that DenKar had laid off employees for the first time ever during the negotiations leading to the SPA, that DenKar's revenues had decreased substantially, and that Denis and Karen Beaulieu had reduced their own salaries to maintain DenKar's profitability.

[6] The defendants denied the plaintiffs' claims and counterclaimed for the unpaid balance of the purchase price, being $78,500, including a $50,000 promissory note.

[7] The parties exchanged offers to settle prior to trial, none of which were accepted. On April 22, 2025, the defendants offered to settle both the claim and the counterclaim for a dismissal of each. If the offer was accepted before 5:00 p.m. on April 25, 2025, the dismissal would be without costs to either side. If the offer was not accepted by that time, the defendants offered to accept their partial indemnity costs to the date of the offer to settle and costs on a substantial indemnity basis thereafter to the date of acceptance. The offer remained open until one minute after the commencement of trial.

[2] As these reasons were being prepared, the defendants wrote to advise the court that the parties had agreed to an extension of the time for delivery of the plaintiffs' submissions to September 28, 2026. Neither side had bothered to tell the court at the time. However, the plaintiffs failed to meet even that deadline. Minutes before these reasons were to be released, the court received the plaintiffs' written submissions. While I have reviewed the submissions, I will not be responding to them specifically. It will be obvious that I agree that neither full indemnity nor substantial indemnity costs are warranted throughout. It will also be obvious that I do not agree either that partial indemnity costs only should be awarded or that the amounts sought for partial, substantial, or full indemnity costs are unreasonable.

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[8] On the first day of trial, counsel for the plaintiffs advised the court that his clients would not be proceeding with their claim of fraudulent misrepresentation and would, instead, be relying only on the allegation of breach of contract.

[9] For reasons released on June 6, 2026, I dismissed the plaintiffs' claim and allowed the defendants' counterclaim. On August 11, 2026, a judgment issued in favour of the defendants in the amount of $86,275.34 for damages and pre-judgment interest from May 26, 2025. Thus, the defendants did better at trial than what they had offered to settle for on April 22, 2025.

ISSUES

[10] The defendants seek costs on three alternative bases.

[11] First and foremost, they seek full indemnity costs throughout the action in the amount of $274,303.73, based on the plaintiffs' failure to prove their allegations of fraudulent misrepresentation. They submit that the abandonment of the fraud claims and the claim for punitive damages at the commencement of trial was not "good faith litigation conduct" and is deserving of an award of full indemnity costs throughout in the defendants' favour.

[12] In the alternative, the defendants submit that, if such conduct should not result in an award of full indemnity costs in their favour, it should at least amount to a substantial indemnity costs award in the amount of $260,588.54.

[13] In the further alternative, the defendants submit that they are entitled under r. 49.10 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 ("the Rules") to partial indemnity costs up to the date of their April 22, 2025, offer and to substantial indemnity costs thereafter in the total amount of $231,303.73.

[14] Before I get to the defendants' submissions, I will briefly set out the legal framework against which those submissions must be considered.

LEGAL FRAMEWORK

[15] Section 131 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, provides that the costs of and incidental to a proceeding are in the discretion of the court, "(s)ubject to the provisions of an Act or the rules of court". Two rules govern the court's discretion when it comes to the matter of costs. Both are engaged in this case.

[16] The first rule is r. 49. Rule 49 governs the court's discretion where a party has served a written offer to settle at least seven days before the commencement of the trial, which remains open for acceptance until the commencement of trial, and is not accepted by the opposing party. The cost consequences of such an offer differ depending on the identity of the party that made it.

[17] Under r. 49.10(2), where the offeror was a defendant and the plaintiff obtains a judgment as favourable or less favourable than the defendant's offer, the plaintiff is entitled to partial indemnity costs to the date of the offer and the defendant is entitled to partial indemnity costs thereafter. The defendants did make an offer to settle in this case, as I will explain shortly. However, the costs consequences of r. 49.01(2) do not apply where a plaintiff obtains no judgment in its favour, as is the case here: *S & A Strasser Ltd. v. Richmond Hill (Town)* (1990), 1 O.R. (3d) 243, at p. 245.

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[18] Nonetheless, the defendants in this case were also plaintiffs by counterclaim and r. 49.10 applies with necessary modifications to counterclaims: r. 49.14. Under r. 49.10(1), where a plaintiff makes an unaccepted offer to settle and the plaintiff does as well or better than the offer, the plaintiff is entitled to partial indemnity costs to the date of the offer and to substantial indemnity costs thereafter. Traditionally, partial indemnity costs have ranged between 50 and 75 percent of a party's reasonable lawyer's fees: Mark M. Orkin, *The Law of Costs*, loose-leaf, 2nd ed. (Toronto: Thomson Reuters, 1987), at § 2.1. However, r. 1.03(1) defines "partial indemnity costs" as meaning costs awarded in accordance with Tarriff A under the Rules and defines "substantial indemnity costs" as meaning 1.5 times partial indemnity costs. Thus, under the Rules, partial indemnity costs should not exceed 66 percent of a party's reasonable lawyer's fees: *Uniform Custom Countertops Inc. v. Royal Designer Tops Inc.* (2004), 132 A.C.W.S. (3d) 643 (Ont. S.C.J.) at para. 17; *SPB Canada Inc. v. Pasta Amora Corp.* (2005), 136 A.C.W.S. (3d) 23 (Ont. S.C.J.), at para. 7.

[19] The defendants in this case have calculated substantial indemnity costs at 90 percent of their full indemnity costs and partial indemnity costs at 60 percent of their substantial indemnity costs. While I am aware that the jurisprudence is mixed on this issue, I am satisfied with costs calculated on this basis: Orkin, at § 2.1.

[20] The second rule engaged in this case is r. 57, which governs the court's discretion where that discretion is not circumscribed by r. 49. Rule 57.10 sets out a non-exhaustive list of factors to be considered including, of significance in this case:

(a) the principle of indemnity;

(b) the importance of the issues; and

(c) the conduct of any party that tended to shorten or lengthen unnecessarily the duration of the proceeding.

[21] Although it is not clear which, if any, of the factors listed in r. 57.01underlie the principle, the law is clear that, in addition to the costs consequences set out in r. 49.10 pertaining to unaccepted offers to settle, the only other circumstance that justifies the imposition of elevated costs is where a party has engaged in reprehensible, scandalous, or outrageous conduct worthy of sanction: *Young v. Young*, [1993] 4 S.C.R. 3, at p. 134; *Davies v. Clarington (Municipality)*, 2009 ONCA 722, 100 O.R. (3d) 66, at para. 28. Making unsubstantiated claims of fraud, misconduct, or dishonesty is one such type of conduct: *Unisys Canada Inc. v. York Three Associates Inc.* (2001), 150 O.A.C. 49 (Ont. C.A.) at para. 15.

[22] I return now to the defendants' submissions.

ANALYSIS

Ought the defendants to be awarded full indemnity costs throughout?

[23] The defendants submit that they are presumptively entitled to their costs because of their success at trial. I agree. The preamble in r. 57.01(1) refers specifically to the result in the proceeding. However, I am unable to agree that the defendants' costs should be awarded on a full indemnity basis.

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[24] There is no definition of full indemnity costs in the Rules. According to Orkin, at § 2.3.1, full indemnity costs should equate to an award of costs at the actual rate incurred, subject to a reasonableness assessment. I do not believe that the amount sought for full indemnity costs in this case is unreasonable.

[25] However, an award of full indemnity costs is reserved for exceptional cases. The Court of Appeal made this point in *Net Connect Installation Inc. v. Mobile Zone Inc.*, 2017 ONCA 766, 140 O.R. (3d) 77, at para. 8:

> While we would not interfere with the costs award made by the motion judge, we would express a cautionary note on this issue. In this case, the motion judge awarded costs on a full indemnity basis. There is a significant and important distinction between full indemnity costs and substantial indemnity costs. An award of costs on an elevated scale is justified in only very narrow circumstances — where an offer to settle is engaged or where the losing party has engaged in behaviour worthy of sanction: *Davies v. Clarington (Municipality)* (2009), 100 O.R. (3d) 66 (Ont. C.A.), at para. 28. Substantial indemnity costs is the elevated scale of costs normally resorted to when the court wishes to express its disapproval of the conduct of a party to the litigation. It follows that conduct worthy of sanction would have to be especially egregious to justify the highest scale of full indemnity costs.

[26] For reasons I will come to, I agree that there was behaviour on the part of the plaintiffs that is worthy of sanction. However, it does not rise to the level of egregiousness required to warrant an award of full indemnity costs.

Ought the defendants to be awarded substantial indemnity costs throughout?

[27] As the Court of Appeal said in *Net Connect*, where elevated costs are awarded, they are normally awarded on the substantial indemnity scale. As I will explain, I agree with the defendants that elevated costs are appropriate in this case. However, I am unable to agree that the plaintiffs' conduct warrants an award of substantial indemnity costs in the full amount sought.

[28] As the defendants correctly point out, the plaintiffs maintained their allegations of fraudulent misconduct against the defendants throughout the pleadings, production, and discovery stages of the action. It was only at the opening of trial that the plaintiffs advised they would not be proceeding on the fraud allegations. Even with that change in strategy, the plaintiffs at times raised the issue of dishonest misconduct on the part of the defendants, especially as it related to billing.

[29] However, it is important to understand that, with the exception of the allegation of overcharging customers, the allegations of the plaintiffs in support of their breach claim overlapped substantially with their allegations of fraud. For example, the allegations relating to the undisclosed layoffs, the undisclosed rumours that DenKar was going out of business, and the undisclosed reduction in management salaries were common to both causes of action. While I found that these did not constitute breaches of the SPA, they did give rise to triable issues, the pursuit of which does not constitute bad litigation behaviour.

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[30] For this reason, I believe it would be unfair to award costs against the plaintiffs as if they had failed in an action that was tried entirely on meritless allegations of fraudulent conduct, which is what I am urged to do by the defendants. Instead, I believe that the costs award should reflect the overlapping nature of the allegations.

[31] The issue then becomes one of quantifying such a costs award.

[32] The fixing of costs is a highly discretionary exercise: *Apotex Inc. v. Eli Lilly Canada Inc.*, 2022 ONCA 587, at para. 56, leave to appeal refused, (2023), [2022] S.C.C.A. No. 387 (S.C.C.); *100 Bloor Street West Corporation v. Barry's Bootcamp Canada Inc.*, 2025 ONCA 447, at para. 70. In exercising that discretion, the overriding principle is to fix an amount for costs that is fair and reasonable, having regard to the factors set out in r. 57.01 and the purposes of a costs award, which includes indemnifying successful litigants; encouraging settlements; and discouraging and sanctioning inappropriate behaviour by litigants: *Boucher v. Public Accountants Council for the Province of Ontario* (2004), 71 O.R. (3d) 291 (Ont. C.A.), at para. 24; *Fong v. Chen* (1999), 128 O.A.C. 2 (Ont. C.A.), at para. 22.

[33] In my view, these purposes would best be fulfilled in this case by an award of costs that is somewhat higher than that called for under r. 49 by the defendants' offer to settle ($231,303.73), but less than the amount that would be payable if substantial indemnity costs were awarded throughout ($274,303.73). For that reason, I would award the defendants' costs in the amount of $250,000 all-inclusive.

[34] Given my conclusion on this issue, I need not consider the defendants' second alternative submission.

CONCLUSION

[35] For the foregoing reasons, the plaintiffs are ordered to pay the defendants' costs in the amount of $250,000. Given the amount and the uncontested evidence at trial about the struggles the individual plaintiffs had bringing DenKar back to its former profitability, I am providing the plaintiffs with six months in which to pay the said costs.

M.G. Ellies J.

Released: November 3, 2026

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