

CITATION: The Morgan Investments Group Inc. et al. v. Adi Development Group Inc.
et al., 2026 ONSC 3697

COURT FILE NOS.: DC-25-00000794-0000/CV-25-00738359-00CL

DATE: 20260625

**SUPERIOR COURT OF JUSTICE - ONTARIO
DIVISIONAL COURT**

RE: THE MORGAN INVESTMENTS GROUP INC.

Applicant/Respondent to
the Counterapplication
(Appellant)

AND

1000185781 ONTARIO INC.

Appellant

AND

1001259155 ONTARIO INC.

Appellant

AND

ADI DEVELOPMENT GROUP INC., TARIQ ADI, and ADI MORGAN
DEVELOPMENTS (LAKESHORE) INC.

Respondents/Applicants by
Counterapplication
(Respondents)

BEFORE: The Honourable Mr. Justice M.D. Faieta

COUNSEL: *W. Michael G. Osborne, Steven J. Weisz & Dilina Lallani*, for 1000185781
Ontario Inc. and 1001259155 Ontario Inc.

Tanya A. Pagliaroli, Alexandra Grishanova & Sydney Bristoll, for the
Appellant, The Morgan Investment Group Inc.

Avi Bourassa, Justin Nasser & Viktor Nikolov, for the Respondents Adi Development Group Inc. and Tariq Ali

HEARD: In writing

ENDORSEMENT

[1] The Morgan Investments Group Inc. ("Morgan"), 1000185781 Ontario Inc. ("Affiliate Lender"), and 1001259155 Ontario Inc. ("100 Ontario"), motion for a stay of certain parts of the Endorsements of The Honourable Mr. Justice Black dated October 7, 2025, October 30, 2025, and November 5, 2025, pending the appeal from his Endorsement dated August 27, 2025 was dismissed: *The Morgan Investments Group Inc. et al. v. Adi Development Group Inc. et al.*, 2025 ONSC 6527.

[2] Adi Development Group and Tariq Ali ("ADG") seek substantial indemnity costs of \$45,680.08. 1000185781 Ontario Inc. and 100 Ontario (the "Secured Lenders") submit that costs should be awarded in the cause or alternatively, that costs on a partial indemnity basis of \$20,000 be awarded. Morgan submits that costs in the cause of the appeal be awarded.

Should Costs in the Cause Be Awarded?

[3] An award of "costs in the cause" was explained in *The Law of Civil Procedure in Ontario*, 5th Ed., Paul M. Perell, John W. Morden, at ¶10.141-¶10.143, as follows:

"Costs in the cause" is an order that the party who is eventually awarded the costs of the proceeding is entitled to the costs of the step in the proceeding. Where costs are "in the cause", the key determinant for a party recovering the costs is that the party is awarded costs at the ultimate trial or hearing. The party need not have been the successful party at the interlocutory step, but he or she will nevertheless recover the costs of it as a part of recovering the costs of the proceeding.

To illustrate, a party unsuccessfully brings a motion for an interlocutory injunction, but the court concludes that it was reasonable for the party to have brought the motion and orders costs in the cause, which means that whichever party succeeds at the trial in recovering costs will recover the costs of the motion. Costs in the cause may be an appropriate order where success on the motion or interlocutory step is divided or where the court concludes that the unsuccessful party should not be penalized in costs if he or she ultimately succeeds in the proceeding. Where a motion for a summary judgment is reasonably brought and the decision to dismiss the motion and send the matter to trial is a close call, it may be appropriate to

order costs in the cause. One value of an order for costs in the cause is that the order sustains the value of a party's investment in his or her litigation until the outcome, and it has the virtue that sometimes it is fair that a party should recover costs for an interlocutory motion – win or lose – if that party ultimately succeeds in the action.

There is a subtle point about an order of costs in the cause. To recover costs it is not sufficient that a party awarded costs in the cause succeed on the merits at the trial of the action or the hearing of the application. What is necessary is that the party succeed in being held entitled to costs. Thus, were the court after the trial to order that there should be no order as to costs, then the pre-condition for recovery of costs in the cause would not have been satisfied. [Footnotes omitted, emphasis added.]

[4] Morgan relies on *Hanemaayer v. Freure*, [2004] O.J. No. 4469 for the principle that the Court favours "... the general rule that costs of motions for leave or stay pending appeal be in the cause or reserved to the appellate court, since success on such motions is not determinative of the appeal". However, *Hanemaayer* does not stand for this broad principle. In *Hanemaayer*, the Court only considered whether costs in the cause should be granted on a motion for leave to appeal and made no statement regarding whether costs in the cause should be awarded on a motion for a stay pending appeal. Specifically, Fedak J. stated, at para. 8:

I am satisfied that where a moving party succeeds in a motion for leave to appeal, the court generally awards costs in the cause, or reserves costs to the appellate court.

[5] The Secured Lenders submit that it would be unfair for the Court to award costs of the motion for a stay until the appeal is determined. In other words, having lost the battle, they submit that costs in respect of the motion should not be ordered until the Court has determined which party has won the war.

[6] Neither the Secured Lenders nor Morgan cited any caselaw where costs in the cause have been awarded on a motion for stay on appeal. ADG did not respond to this submission.

[7] Rule 57.03(1)(a) of the *Rules of Civil Procedure* is applicable. It directs that "[o]n the hearing of a contested motion, unless the court is satisfied that a different order would be more just, the court shall, fix the costs of the motion and order them to be paid within 30 days."

[8] In my view, the principle in *Hanemaayer* is not applicable on a motion for a stay pending appeal. I find that it would not be just to depart from the general rule described in Rule 57.03(1)(a) in these circumstances. On this motion, none of the three elements

for obtaining a stay were established. Neither the Secured Lenders nor Morgan have sufficiently explained why ADG, who successfully defended the motion for a stay, should have the recovery of their costs delayed and bear the risk that they will have to pay their costs of this unsuccessful motion for a stay in the event that this appeal is successful.

What Amount of Costs Should be Awarded?

[9] The following general principles, described by L.B. Roberts, J.A., in *Apotex Inc. v. Eli Lilly Canada Inc.*, 2022 ONCA 587, govern the award of costs in a civil proceeding:

59 The relevant principles to be applied in a court's exercise of its discretion to award costs under s. 131 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 are well established. They include the myriad factors enumerated in rule 57.01(1) of the *Rules of Civil Procedure*, such as: the result achieved, the amounts claimed and recovered, the complexity and importance of the issues in the proceeding, as well as "any other matter relevant to the question of costs". This is not a mechanical exercise or a rubber stamp.

60 A proper costs assessment requires a court to undertake a critical examination of the relevant factors as applied to the costs claimed and then "step back and consider the result produced and question whether, in all the circumstances, the result is fair and reasonable" ...

61 The overarching objective is to fix an amount of costs that is objectively reasonable, fair, and proportionate for the unsuccessful party to pay in the circumstances of the case, rather than to fix an amount based on the actual costs incurred by the successful litigant.

62 While the reasonable expectation of the parties concerning the amount of a costs award is a relevant factor that informs the determination of what is fair and reasonable, it is not the only, determinative factor and cannot be allowed to overwhelm the analysis of what is objectively reasonable in the circumstances of the case. To hold otherwise would result in the means of the parties artificially inflating costs with the concomitant chilling effect on access to justice for less wealthy parties...

63 Although each costs assessment is a fact-driven exercise related to a particular case, consistency with comparable awards in like cases is desirable and the reasonableness of costs that represent an outlier must be objectively and carefully scrutinized, taking into account the chilling effect on litigation that this kind of award could have. ...

65 Costs that are reasonable, fair, and proportionate for a party to pay in the circumstances of the case should reflect what is reasonably

predictable and warranted for the type of activity undertaken in the circumstances of the case, rather than the amount of time that a party's lawyer is willing or permitted to expend. The party required to pay the successful party's costs "must not be faced with an award that does not reasonably reflect the amount of time and effort that was warranted by the proceedings".

66 The party seeking costs bears the burden of proving them to be reasonable, fair, and proportionate. The absence of dockets is not an automatic bar to proving or receiving an award of costs: *Leonard v. Zychowicz*, 2022 ONCA 212, at para. 33. However, absent dockets, a description of the activities for which fees and disbursements are claimed must be sufficient to permit for the kind of close scrutiny that the court is required to undertake. The material provided for the assessment must allow the court to come to a conclusion as to the amount of time reasonably required by the party seeking costs to deal with all aspects of the proceedings for which costs are claimed, including whether there was over-lawyering or unnecessary duplication of legal work: *Restoule*, at para. 355. Bald statements do not assist the court with this task but give rise to the kind of mechanical calculation of hours times rates that this court cautioned against in *Boucher*, at para. 26, and in *McNaughton Automotive Limited v. Co-operators General Insurance Co.*, 2009 ONCA 598, 255 O.A.C. 362, at para. 17. [Citations omitted.]

[10] The parties addressed the following issues.

Substantial Indemnity Costs

[11] Substantial indemnity costs should only be awarded when an offer to settle is engaged or where the losing party has engaged in reprehensible, scandalous, or outrageous conduct: *Net Connect Installation Inc. v. Mobile Zone Inc.*, 2017 ONCA 766, 140 O.R. (3d) 77, at para. 8; *More v. 1362279 Ontario Ltd. (Seiko Homes)*, 2023 ONCA 527, at para. 31.

[12] In *Davies v. Clarington (Municipality)*, 2009 ONCA 722, 100 O.R. (3d) 66, at para. 45, Epstein, J.A. stated:

...a distinction must be made between hard-fought litigation that turns out to have been misguided, on the one hand, and malicious counter-productive conduct, on the other. The former, the thrust and parry of the adversary system, does not warrant sanction: the latter well may.

[13] ADG submits that elevated costs should be ordered because: (a) the stay motion was a bad faith attempt to disrupt a court-ordered buy-out at the 11th hour; (b) the

moving parties unreasonably rejected ADG's offer to post a \$1.5 million charge on another real estate project to keep the buyout on track and to avoid the stay motion; (c) the parties failed to establish a serious issue to be tried; and (d) the moving parties misled the Court or wasted its time by, amongst other things, by taking the position that the Secured Lenders were strangers to the litigation.

[14] I find that the circumstances do not warrant the award of substantial indemnity costs. Morgan did not mislead the Court. I agree with the submission that the complaints made by ADG reflect hard fought misguided litigation rather than "malicious counter-productive conduct" that attracts elevated costs.

Excessive Billed Time

[15] The Secured Lenders submit that the time billed was excessive, however, I find that it is not appropriate in these circumstances to second-guess successful counsel on the amount of time billed particularly as it was responding on an expedited basis to this stay motion.

[16] I note that the Secured Lenders' partial indemnity costs of \$28,146.63 were greater than ADG's partial indemnity costs of \$26,950.90.

Complexity

[17] Neither party disputes the Secured Lenders' submission that this was a simple stay motion with minimal materials filed by them.

Importance of the Issues

[18] There is no dispute that its claim for loss of security was an important issue.

CONCLUSION

[19] Although Morgan submits that it had minimal involvement on the motion, it supported the relief sought and advanced its own specific arguments. I find that costs should not be apportioned between the Secured Lenders and Morgan.

[20] I find that it is fair, reasonable, and proportionate to order that the Secured Lenders and Morgan pay partial indemnity costs of \$26,950.90 to ADG in respect of this stay motion within 30 days.

M.D. Faieta J.

RELEASED: June 25, 2026