

CITATION: Parthenos Developments Ltd. v. 2599792 Ontario Inc. et al., 2026 ONSC 4820
COURT FILE NO.: CV-25-100695
DATE: 2026/08/21

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Parthenos Developments Ltd., Applicant

-and-

2599792 Ontario Inc. and Atef Ghali Medicine Professional Corporation,
Respondents

BEFORE: The Honourable Justice N. Somji

COUNSEL: Alexander Bissonnette, for the Applicant

Stéphane Maclean, for 2599792 Ontario Inc.

Atef Ghali Medicine Professional Corporation, self-represented

HEARD: In Chambers

COSTS ENDORSEMENT

Introduction

[1] The Respondents seek substantial indemnity costs of \$24,821.93, or alternatively, partial indemnity costs of \$16,715.60, following their success in defending against an Application for an order terminating a lease and requiring them to vacate a commercial property: *Parthenos Developments Ltd. v. 2599792 Ontario Inc. et al.*, 2026 ONSC 3128.

[2] The Applicant does not dispute the Respondents' billings or that they are entitled to costs as the successful party, but argues that costs should be limited to a partial indemnity award.

[3] The issue to be decided is what is a fair and reasonable costs award to the Respondents?

Analysis

[4] Courts have broad discretion to determine to whom costs should be paid and the quantum: s. 131(1) *Ontario Courts of Justice Act*, R.S.O. 1990, c. C.43, as am.

[5] In exercising their discretion, judges may consider the factors set out in Rule 57.01(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 and governing jurisprudence. These factors include: the experience of counsel and rates charged, the amount an unsuccessful party could reasonably expect to pay, amounts claimed, amounts recovered, apportionment of liability, the importance of the issues, complexity of the proceedings, and the conduct of the parties in lengthening or shortening the proceedings.

[6] The purposes of costs award are to indemnify a successful party; to encourage settlement; to deter frivolous actions and defences; and to discourage unnecessary steps that unduly prolong the litigation: *1465778 Ontario Inc. v. 1122077 Ontario Ltd.*, 2006 CanLII 35819, 82 O.R. (3d) 757 (C.A.), at para. 26; *Fong v. Chan* (1999), 46 O.R.(3d) 330 (C.A.), at para. 22.

[7] Costs are generally awarded on a partial indemnity basis. Elevated costs are warranted in two circumstances. The first involves an offer to settle under Rule 49. Substantial indemnity costs are explicitly authorized under Rule 49.10 where certain conditions are met. However, the court has discretion to consider offers to settle when awarding costs and may take into account any offer to settle made in writing, the date the offer was made and the terms of the offer: Rule 49.13; see also *The Riverside Professional Centre Inc. v. The Ottawa Hospital*, 2021 ONSC 3606, at para. 18 (“*Riverside*”).

[8] The second circumstances for elevated costs involve sanction-worthy behaviour of the losing party: *Davies v. Clarington (Municipality) et al.*, 2009 ONCA 722 at para. 28.

Offers to settle

[9] I find the Respondents’ offers to settle warrant an elevated costs award.

[10] In my decision, I found that the Defendants provided the Applicant unequivocal notice to renew the commercial lease and alternatively, even if they did not, they were entitled to relief from forfeiture. My findings entitled the Respondents to renew the commercial lease with the Applicant for 10 years at an increased rate of 5% or fair market value.

[11] Here, the Respondents made two email offers to settle on terms that were at least as or more favourable to the Applicant than the judgment. The first offer made April 11, 2025, proposed

lease renewal at the escalated market rent that the Applicant desired. The second offer dated June 8, 2025, proposed lease renewal for only two years, as opposed to ten, to allow the Respondents sufficient time to relocate their businesses to new premises. I find that, had the Applicant accepted either of those offers, they would have been in an equal, if not better, position.

[12] While I agree with the Applicant that these were not formal Rule 47 offers, the court has discretion to consider them in determining quantum of costs. I find the offers to settle, while not in the prescribed form, were made eight months before the hearing and constituted sincere efforts to resolve the matter. Consequently, I find they warrant consideration for an elevated costs award: *Riverside* at paras. 13 to 18.

Conduct of the parties

[13] The Respondents do not suggest that the Applicant engaged in any misconduct so as to warrant an elevated costs award to them. The Respondents rely principally on other factors: success, offers to settle, complexity, and importance of issues. Consequently, there is no need to assess the conduct of the Applicant.

[14] The Applicant, on the other hand, suggests that costs award to the Respondent should be reduced because their communications with the Applicant regarding lease renewal created uncertainty and because they sought relief from forfeiture. I find there is no merit to either argument. It was the Applicant who initiated the court proceedings because they adopted the position that the Respondents' communications were unclear which is not what I found. Furthermore, once the Application was initiated, the Respondents were entitled to rely on any remedies available to them, including relief from forfeiture, to defend against the Application.

[15] The Applicant has not cited any authority that would preclude a party from costs where relief in forfeiture is granted. On the contrary, in *North York Family Physicians Holdings Inc. v. 1482241 Ontario Limited*, 2011 ONSC 3742, the court awarded partial indemnity costs to a commercial tenant who was granted relief from forfeiture for breach of a commercial lease. I note, however, that there was no meaningful discussion of whether the tenant's offer to settle in that case warranted an elevated costs award over and above partial indemnity.

Complexity and importance of issues.

[16] The proceeding was moderately complex. There were several legal issues to resolve, including whether 2599792 Ontario Inc. exercised its renewal option, whether the option was void for uncertainty, and whether relief from forfeiture should be granted.

[17] The issues were extremely important to the Respondents because an unfavourable ruling would have resulted in a long term medical clinic and pharmacy having to close its doors for a considerable period before being able to relocate to a new premises. As explained in my decision, closure would have not only resulted in financial losses to the Respondent businesses but would have a detrimental effect on the clients they served: *Parthenos* at paras. 96 and 98.

Reasonableness of the billings

[18] The total costs for the Respondents in defending the Application inclusive of fees, disbursements, and HST is \$27,524. This amount is comparable to the Applicant's own legal fees which totalled \$22,899 for 63 billable hours and is an amount well within the range of what an unsuccessful party might expect to pay.

[19] The Respondents' partial indemnity costs are \$16,715.60 and substantial indemnity costs are \$24,821.93.

[20] The Applicant's primary counsel charged \$195/hr which is a reasonable rate for a five-year call. The legal team spent just under 75 hours on the Application. Services included communicating with the client, researching relevant law, preparing affidavits, pleadings, facts, and attending for the hearing. I find the total hours spent is reasonable and commensurate with the work performed.

Conclusion

[21] Fixing costs is not a mechanical exercise: *Apotex Inc. v. Eli Lilly Canada Inc.*, 2022 ONCA 587, at para. 59. Ultimately, "the overall 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." *Apotex Inc.*, at para. 61, citing *Boucher*, at para. 26; *Zesta Engineering Ltd. v. Cloutier* (2002), 21 C.C.E.L. (3d) 161 (Ont. C.A.), at para. 4.

[22] Having considered that the Respondents are the successful party, the reasonable expectation of the parties, the offers to settle, complexity, importance of issues, and the reasonableness of the billings, I find that it would be fair and reasonable to award elevated costs in the fixed amount of \$20,000 inclusive of HST and disbursements.

Order

[23] There will be an Order that the Applicants pay the Respondents costs in the fixed amount of \$20,000 within 30 days.

Justice N. Somji

Date: August 21, 2026

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Somji J.

Released: August 21, 2026