CITATION: Tajvidi v. Georgiadis, 2015 ONSC 4698
COURT FILE NO.: CV-11-438215-0000
DATE: 20150723

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: HAMIDEH TAJVIDI and FARROKH TAJVIDI, Plaintiffs

AND:

LOUIE GEORGIADIS, JANET-LAU HOOSEN and TOYOTA CREDIT CANADA INC., Defendants

BEFORE: S.A.Q. Akhtar J.

APPEARANCE: *L. Claude Blouin,* Counsel for Georgiadis

D. Rogers, Counsel for Hoosen

ENDORSEMENT

[1] On July 1, 2009, an accident occurred when Janet-Lau Hoosen, driving a Toyota RAV 4 attempted to make a left hand turn at a red light on Bayview Mews in North York, Toronto. Her vehicle collided with an Acura driven by Louie Georgiadis which was travelling northbound and continued through a red light. The resulting collision saw Georgiadis' Acura spin out of control and hit a pedestrian, Ms. Hamideh Tajvidi, standing on the north east corner of the intersection. She suffered serious injuries as a result.

[2] Both Hoosen and Georgiadis settled the action brought by Ms. Tajvidi in the amount of $1,200,000. They could not, however, agree upon the apportionment of liability as between their own actions as a contributory factor in the accident. Georgiadis served an offer to contribute of 50% of the $1.2 million settlement. That was rejected by Hoosen who wanted Georgiadis to contribute 60%.

[3] On May 19, 2015 a six day jury trial was held to resolve the question. The jury determined liability on an 85-15% split against Hoosen.

[4] Georgiadis now seeks costs of the action relying on his offer to contribute as an argument for the fixing of costs on a partial indemnity basis up to the offer to contribute and a substantial indemnity basis thereafter. His application is for costs in the sum of $95,000 plus HST, and the cost of his expert witness amounting to $9818.29. Hoosen takes the position that costs should be

awarded on a partial indemnity basis alone. He submits that $20,000 plus HST with the additional cost of Georgiadis' expert is the appropriate amount.

[5] Rule 57.01 of the *Rules of Civil Procedure*, provides guidance as to the amount of costs to be awarded. The following factors are applicable to this case:

> (o.a) the principle of indemnity, including, where applicable, the experience of the lawyer for the party entitled to the costs as well as the rates charged and the hours spent by that lawyer;
>
> (o.b) 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;
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> (a) the amount claimed and the amount recovered in the proceeding;
> (b) the apportionment of liability;
> (c) the complexity of the proceeding;
> (d) the importance of the issues;
> (e) the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding;
> (f) whether any step in the proceeding was,
>
> (i) improper, vexatious or unnecessary, or
> (ii) taken through negligence, mistake or excessive caution;
>
> (g) a party's denial of or refusal to admit anything that should have been admitted;
> (h) whether it is appropriate to award any costs or more than one set of costs where a party,
>
> (i) commenced separate proceedings for claims that should have been made in one proceeding, or
> (ii) in defending a proceeding separated unnecessarily from another party in the same interest or defended by a different lawyer; and
>
> (i) any other matter relevant to the question of costs.

[6] Georgiadis invokes the provisions of Rule 49 of the *Rules* to support his claim for costs. Rule 49.10(1) deals with offers to settle by a plaintiff who has been successful in their claim and obtained a judgment as good as or better than their offer to settle. In those cases, that plaintiff is entitled to partial indemnity of costs up to the date of the offer and substantial indemnity thereafter.

[7] Rule 49.10(2) deals with the defendant's offer to settle. The wording is very different to that of subsection (1). Where a successful plaintiff has failed to beat the defendant's offer, that plaintiff is entitled to partial indemnity costs up to the date of the offer. The defendant, however, is entitled to only partial indemnity after that date.

[8] Finally Rule 49.12 deals with offers to contribute between defendants who are alleged to be jointly or jointly and severally liable to the plaintiff. In this case, the court may take an offer to contribute into account when determining costs. There is no entitlement by the successful defendant to substantial indemnity costs.

[9] Defendant offers to contribute do not equal plaintiff offers to settle but are more akin to a defendant offers to settle: *Adani (Estate) v. Peel (Municipality)* (1993), 66 O.A.C. 137 at para. 44. In *Davies v. Clarington (Municipality)*, 2009 ONCA 722, relied upon by both parties in this case, the Court of Appeal for Ontario set out general principles relating to the imposition of elevated costs. Those types of costs were envisaged only in Rule 49.10 cases where they were expressly authorised and, alternatively, those where the unsuccessful's party has been so reprehensible that elevated costs are justified.

[10] The case at bar falls into neither of those categories. This was a straight forward case, made all the smoother because of the impressive co-operation between the parties.

[11] I am also cognisant of the Rule 57.01 factors at play in this case. As noted, this was a fairly simple trial determining the apportionment of liability of two drivers who were both found to be at fault in the matter. Hoosen's expectations of costs is an important element in the analysis. Although she was found largely at fault, her understanding of the evidence – where two eyewitnesses identified Georgiadis as accelerating through a red light – might have led her to believe that, even if unsuccessful, the costs of litigation would be mitigated by the facts. There was no unreasonable or vexatious behaviour on her part.

[12] I also accept her submissions that this was not a case where Georgiadis was found to be entirely blameless as the jury lay 15% of liability at his feet. The costs incurred by Georgiadis must also be viewed through the lens that a settlement was reached with the plaintiff. I therefore do not view the costs of the entire action recoverable by Georgiadis.

[13] Against this, however, is the fact that Hoosen was held responsible for 85% of liability, an amount which is hardly insignificant. Further, Georgiadis was willing to settle this case without trial, offering to pay 50% of the plaintiff's award. That offer was rejected by Hoosen on the basis of a difference of 10%.

[14] Cost awards are not a mathematical exercise but a reflection of reasonableness. Overall, I am required to consider what is "fair and reasonable" in fixing costs, with a view to balance and compensation of the successful party but also with the goal of fostering access to justice: *Boucher v. Public Accountants Council (Ontario)* (2004), 71 O.R. (3d) 291 (C.A.).

[15] With that in mind, I reject Georgiadis' request to impose a costs order which would include both partial and substantial indemnity. I find no basis to order costs on a substantial indemnity basis. I also reject Hoosen's suggested award of $20,500 plus HST as being inadequate. This was a six day jury trial requiring time and preparation by experienced counsel.

[16] In my view, a reasonable amount of costs would be $50,000 plus HST, and the cost of the expert witness totalling $9818.29.

[17] These costs are to be paid by Hoosen within 30 days of this judgment.

[18] I thank both counsel for their written submissions.

S.A.Q. Akhtar J.

Date: JUL 23 2015