

COSTS ENDORSEMENT

Short Style of Cause: Sheth v. Randhawa et al.

File No.: CV-20-1816

Date	Counsel	
August 5, 2021	<p>D. Laframboise, for the Plaintiff</p> <p>M. Kestenberg & A. Hershtal for the Defendant Randhawa</p> <p>M. Harris for the Defendants Bindaas Capital, Ash Karia, Sujoy Pal, & Dr. Mangesh Inamdar Medical Prof. Corp. ("Bindaas Defendants")</p> <p>P. Robson for the Defendants Shan Mangal, 11035738 Canada Inc., & Gurpal Singh ("Mangal Defendants)</p> <p>D. Yiokaris for the Defendants Anoop Singh Dhillon and TSD Law Prof. Corp. ("Dhillon Defendants")</p>	<p>[1] This Endorsement relates to costs arising from a partial summary judgment motion that was heard by me on June 9, 2021. I denied the Plaintiff's contested request for an adjournment of the hearing. I then heard the motion and issued an Endorsement dated June 14, 2021, in which I dismissed the Plaintiff's request for an order setting aside a conveyance of property under Power of Sale from Bindaas Capital to 1103 Corp., and I granted a "boomerang" summary judgment order against the Plaintiff, dismissing her action as against all Defendants except for an accounting against Bindaas Capital and Ash Karia.</p> <p>[2] The Plaintiff's claims in the action included serious allegations of fraudulent conveyance and conspiracy that would amount to professional misconduct or negligence for the individual defendants who are lawyers.</p> <p>[3] I have reviewed the parties' written submissions on costs and the Bills of Costs submitted by Defendants' counsel.</p> <p>[4] In summary,</p> <ul style="list-style-type: none">a. The Defendant Randhawa seeks an order for the Plaintiff to pay his costs of the motion and of the action on a partial indemnity basis in the total amount of \$45,118;b. The Bindaas Defendants seek an order for the Plaintiff to pay their costs of the motion and of the action on a substantial indemnity basis in the total amount of \$38,925;c. the Mangal Defendants seek an order for the Plaintiff to pay their costs of the motion and of the action on a substantial indemnity basis in the total amount of \$61,514; and

COSTS ENDORSEMENT

Short Style of Cause: Sheth v. Randhawa et al.

File No.: CV-20-1816

Date	Counsel	
		<p>d. the Dhillon Defendants seek an order for the Plaintiff to pay their costs of the motion and of the action on a partial indemnity basis in the total amount of \$48,828.</p> <p>[5] The Plaintiff opposes all the Defendants' costs requests based on a variety of grounds, which I will not review in detail. The grounds upon which the Defendants' seek their costs will similarly not be reviewed in detail in this Endorsement.</p> <p>[6] The Defendants were successful in the motion and, with the exception of Bindaas Capital and Ash Karia, were successful in having the entire action dismissed as against them. Bindaas Capital and Ash Karia were successful in the motion, but an accounting has yet to be conducted with respect to the impugned transaction. That aspect of the proceeding is ongoing.</p> <p>[7] In the circumstances, it is not appropriate for me to deal with costs of the entire action with respect to the Bindaas Defendants. For those Defendants, I will only deal with costs of the motion that I heard. For all other Defendants, I will deal with costs of the motion and the action together.</p> <p>[8] Rule 57(1) of the <i>Rules of Civil Procedure</i> govern the exercise of my discretion with respect to costs. Taking the relevant factors into consideration, I make the following findings:</p> <p>a. The hourly rates charged by the Defendants' lawyers are reasonable (in some cases quite modest) relative to the level of experience of each lawyer. There was appropriate delegation of work to more junior lawyers.</p>

COSTS ENDORSEMENT

Short Style of Cause: Sheth v. Randhawa et al.

File No.: CV-20-1816

Date	Counsel	
		<p>b. The amount of damages claimed by the Plaintiff in the underlying action was \$1,000,000, including punitive damages. The allegations against the Defendants were serious and amounted to an attack on their personal and professional integrity and reputations. In the circumstances, the issues were very important, and the Defendants were compelled to mount a vigorous defence.</p> <p>c. The Plaintiff took a “shotgun approach” to the litigation. Some of the Bindaas Defendants and the Mangal Defendants were completely innocent parties who were dragged into the proceeding unnecessarily.</p> <p>d. The motion was complex, both factually and legally. The background facts were complicated and key facts were contested. The issues involved allegations of fraud and conspiracy, validity of a Notice of Sale, interpretation and application of ss.35 and 36 of the <i>Mortgages Act</i>, and the significance of Law Statements.</p> <p>e. A considerable amount of work was required to be done on the file generally and in preparation for the motion. The Plaintiff’s decision to name so many parties as Defendants meant that the parties had to review multiple pleadings and affidavits. Defendants’ counsel worked cooperatively to divide the labour appropriately and to avoid duplication of effort that would have resulted in unnecessary costs. The Dhillon Defendants took the lead on cross-examinations and on written and oral submissions in the motion before me, but all Defendants were actively involved and advanced their own interests.</p>

COSTS ENDORSEMENT

Short Style of Cause: Sheth v. Randhawa et al.

File No.: CV-20-1816

Date	Counsel	
		<p>f. The parties exchanged production briefs. The motion record was voluminous. There were multiple detailed affidavits and several cross-examinations of affiants. The fact that the Dhillon Defendants took the lead on the cross-examinations and that other Defendants' lawyers did not ask any questions during the examinations does not alter the fact that all the Defendants' counsel were required to be present for the examinations and to be prepared to ask questions if they felt that Dhillon's lawyer did not adequately cover the evidence relevant to their circumstances. The parties filed well-prepared factums and books of authorities. All parties were required to review the materials submitted by the other parties. Preparation for examinations and for the motion hearing was no-doubt time consuming and labour intensive, given the complexity of the issues.</p> <p>g. The proceeding had a complicated procedural history, with several motions and multiple court appearances, which increased costs.</p> <p>[9] I have considered the Bindaas Defendants' and the Mangal Defendants' request for costs on a substantial indemnity basis. Although the claims made by the Plaintiff were serious and were unfounded, I am not persuaded that this alone warrants awarding costs on an elevated scale. The plaintiff did engage in some questionable conduct. Specifically, she misrepresented facts under oath with respect to her deal with a prospective purchaser of the disputed property (Abraham), she unilaterally selected a motion date without consulting opposing counsel, and she attempted improperly to file additional evidence after the parties had conducted cross-examinations, which is impermissible.</p>

COSTS ENDORSEMENT

Short Style of Cause: Sheth v. Randhawa et al.

File No.: CV-20-1816

Date	Counsel	
		<p>This conduct is not, however, so egregious as to amount to the type of unreasonable conduct that should be sanctioned with costs. I do not accept the Bindaas Defendants' submission that her conduct was reprehensible.</p> <p>[10] Ultimately, I am required to order costs that are fair and reasonable in the circumstances of the case, taking into consideration the amount of costs that an unsuccessful party could reasonably expect to pay. When the plaintiff decided to adopt her "shotgun approach" to the litigation, naming multiple parties, claiming a million dollars in damages, and making allegations of misconduct for which she did not have evidence, she ought to have known that the Defendants would vigorously defend the action and that significant costs would be incurred.</p> <p>[11] On a close examination of the Bills of Costs submitted, however, I have concluded that the costs requested are excessive. I have no issue with the hourly rates charged by the various lawyers, but some of the hours billed are not supported by the work performed. The Defendants did not provide itemized dockets, so it is difficult to discern the precise amount of time allocated to individual services provided, but a general description of the work performed is set out in the Bills of Costs. I will not itemize every instance in which I have concluded that the fees charged exceeded the amount of time that ought reasonably to have been spent on specific tasks. In any event, my decision on costs is more of a global assessment of what is fair, reasonable and proportionate in the circumstances.</p> <p>[12] Based on the above, I make the following orders against the Plaintiff:</p>

COSTS ENDORSEMENT

Short Style of Cause: Sheth v. Randhawa et al.

File No.: CV-20-1816

Date	Counsel	
		<p>a. She shall pay the Defendant Randhawa's costs of the motion and of the action, on a partial indemnity basis, in the total amount of \$40,000, inclusive of fees, disbursements and HST.</p> <p>b. She shall pay the Bindaas Defendants' costs of the motion, on a partial indemnity basis, in the total amount of \$18,000, inclusive of fees, disbursements and HST. Costs of the action against Bindaas Capital and Ash Karia are reserved to be determined when the accounting is concluded.</p> <p>c. She shall pay the Mangal Defendants' costs of the motion and of the action, on a partial indemnity basis, in the total amount of \$37,000, inclusive of fees, disbursements and HST.</p> <p>d. She shall pay the Dhillon Defendants' costs of the motion and of the action, on a partial indemnity basis, in the total amount of \$45,000, inclusive of fees, disbursements and HST.</p> <div style="text-align: right; margin-top: 20px;"> <hr style="width: 25%; margin-left: auto; margin-right: 0;"/><p>PETERSEN, J.</p></div>