

COURT OF APPEAL FOR ONTARIO

CITATION: Laczko v. Alexander, 2012 ONCA 872

DATE: 20121211

DOCKET: M41762

Weiler J.A. (In Chambers)

BETWEEN

Janos Laczko

Plaintiff (Responding Party)

and

Edwin Alexander and Mercedes Property Management Ltd.

Defendants (Moving Parties)

William G. Scott, for the moving parties

Richard A. Wellenreiter, for the responding party

Heard: November 13, 2012

On a motion to extend the time to appeal the order of Justice Jane A. Milanetti of the Superior Court of Justice, dated May 22, 2012.

COSTS ENDORSEMENT

[1] The applicant's motion to extend the time to appeal the order striking his statement of defence was heard November 13, 2012, with reasons dismissing the motion released on November 20, 2012. At that time, I indicated that the respondent was entitled to his costs with submissions as to costs to be made in writing. The time for providing submissions now having passed, this is my endorsement on costs.

[2] Laczko seeks costs on a substantial indemnity basis. The court's discretion to award costs is governed by s. 131 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, and by r. 57.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. It is well established that costs should be awarded on a partial indemnity basis unless justice can only be done by complete or substantial indemnification: see *Foulis v. Robinson* (1978), 21 O.R. (2d) 769 (C.A.). As a general rule, justice will only require substantial indemnification where there has been "reprehensible, scandalous or outrageous conduct on the part of one of the parties": *Young v. Young*, [1993] 4 S.C.R. 3, at p. 134. Alexander's unjustified failure to comply with his disclosure obligations was no doubt worthy of rebuke; "reprehensible," "scandalous," or "outrageous," it was not. I would, therefore, decline to award costs on a substantial indemnity basis.

[3] Having regard to the result achieved, the complexity of the motion, and the general principles set out in r. 57.01(1), I order that costs be awarded on a partial indemnity basis, fixed in the amount of \$ 7,044.36, inclusive of disbursements and applicable taxes.

"K.M. Weiler J.A."