

COURT OF APPEAL FOR ONTARIO

CITATION: Gentech Insurance Ltd. v. Martina, 2012 ONCA 916

DATE: 20121224

DOCKET: C54524

Feldman, Sharpe and Ducharme JJ.A.

BETWEEN

Gentech Insurance Ltd.

Plaintiff

(Respondent)

and

Alan Martina and Peter Diamantouros

Defendants

(Appellants)

Earl A. Cherniak, Q.C., for the appellants

Allyson Fischer and Stephen F. Gleave, for the respondent

Heard: August 20, 2012

On appeal from the judgment of Justice David G. Stinson of the Superior Court of Justice, dated October 6, 2011.

ENDORSEMENT RE COSTS

[1] Following the release of the reasons of the court, the appellants brought a motion to the panel asking the court to readdress part of the merits of the appeal and the costs of the appellant Diamantouros, who was successful on the appeal.

[2] The court advised the parties that it would not readdress any of the issues on the merits of the appeal, but would receive submissions from the respondent with respect to the costs attributable to Mr. Diamantouros.

[3] The issue of costs was addressed by the court at the end of oral argument on the hearing of the appeal. Mr. Cotter, who represented both appellants, advised the court that counsel had agreed on the amount for costs of the trial as \$90,475.02, and for the appeal as \$25,000 to be payable to the winner of the appeal. When asked what would happen if the appellant Martina was unsuccessful and the appellant Diamantouros was successful, counsel responded that in that event the \$25,000 amount should be reduced by \$5000. As that was the result, the court ordered costs in accordance with the agreement and advice of counsel.

[4] Mr. Cotter now says that with respect to the costs of the appeal, he did not agree that Mr. Diamantouros' costs could be set off against Mr. Martina's costs, and that the issue of the costs of the trial was never addressed. He submits that 50% of the costs of the trial are attributable to Mr. Diamantouros.

[5] Counsel for the respondent submits that the appellants should be bound by the agreement made between counsel. They also point out that as no Bill of Costs was delivered by the appellants, there is no explanation of what amount may be attributable to work done on behalf of Mr. Diamantouros. However, if any

amount is to be attributed, it should be a maximum of 25% of the total or \$22,500.

[6] It appears that Mr. Cotter made an error in his costs submissions on behalf of Mr. Diamantouros. However, the court is prepared to allow him to correct the error in fairness to Mr. Diamantouros who was successful on his appeal.

[7] In the result, the respondent shall have its costs of the trial against the appellant Martina in the amount of \$68,000 and its costs of the appeal in the amount of \$20,000. The appellant Diamantouros shall have his costs of the trial against the respondent in the amount of \$22,500 and of the appeal in the amount of \$5000.

“K. Feldman J.A.”

“Robert J. Sharpe J.A.”

“Ducharme J.A.”