

COURT OF APPEAL FOR ONTARIO

CITATION: Truscott v. Co-Operators General Insurance Company,
2023 ONCA 372
DATE: 20230519
DOCKET: C70414

Gillese, Tulloch and Roberts JJ.A.

BETWEEN

Joseph Truscott and 1215588 Ontario Ltd.¹

Plaintiffs/Responding Parties
(Appellants)

and

Co-Operators General Insurance Company, Thomas Carroll
and Yvonne Young & Associates Inc.

Defendants/Moving Parties
(Respondents)

James A. Scarfone and Jacob Sazio, for the appellants

Robert Dowhan and Matt McMahon, for the respondents

Heard: December 14, 2022

On appeal from the judgment of Justice Andrew J. Goodman of the Superior Court of Justice, dated February 4, 2022, with reasons reported at 2022 ONSC 829.

COSTS ENDORSEMENT

¹ The Statement of Claim initially listed Joseph Truscott as a plaintiff in the action instead of his professional corporation. On November 3, 2021, Nightingale J. ordered that the professional corporation be added as plaintiff in the action “in the place and stead of ‘Joseph Truscott’” and that the title of proceedings be amended. However, the title of proceedings in the judgment under appeal did not reflect this change. Accordingly, this court kept the title of proceedings consistent with the judgment below.

[1] By decision dated April 19, 2023, this court allowed the appellants' appeal and permitted their entire Claim to proceed to trial. Costs of the appeal were ordered in favour of the appellants and the parties were invited to agree on costs of the Motion, failing which they could file written submissions on the matter. The written submissions were to include the bills of costs that each filed on the Motion below. The parties were unable to reach an agreement on costs of the Motion and they have now made submissions on that matter.

[2] On a partial indemnity basis, the appellants seek costs of approximately \$65,400, plus HST and disbursements. Co-operators submit those costs are excessive, disproportionate, and unreasonable. They point to their bill of costs for the Motion showing costs, on a partial indemnity basis, of just over \$55,000, including HST. They also point to the costs award below, which fixed costs in their favour at \$32,066, plus disbursements. They say that this court should apply the reasoning of the motion judge in setting costs below and award the appellants costs of the Motion to a maximum of \$30,000, plus disbursements.

[3] We order costs of the Motion in favour of the appellants in the amount of \$55,000, plus HST. The amount of the costs award reflects three primary considerations.

[4] First, given Co-operators' bill of costs on the Motion, it could reasonably have expected to pay costs of that amount. Second, the issues on the Motion were

of the utmost importance to the appellants. In the Motion, Co-operators sought partial summary judgment on crucial issues in the Claim and it also sought to have the Claim struck as against its employee, pursuant to r. 21.01(1)(b) of the *Rules of Civil Procedure*. In seeking to have the appellants' claims relating to building and valuable records losses dismissed and the Claim struck as against the Co-operators employee, the Motion went to the heart of the appellants' Claim. Third, because of the nature of the issues raised and relief sought by Co-operators, the proceeding was made more complex and protracted. As we explained in our reasons for decision, this was clearly not an appropriate case for partial summary judgment.

DISPOSITION

[5] Costs of the Motion are ordered in favour of the appellants in the amount of \$55,000, plus HST.

“E.E. Gillese J.A.”

“M. Tulloch J.A.”

“L.B. Roberts J.A.”