

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:** )  
)  
**Stephen Drummond** ) *Shane H. Katz* for the Plaintiff  
)  
Plaintiff )  
)  
– and – )  
)  
**The Cadillac Fairview Corporation** ) *Stuart Woody* for the Defendant  
**Limited** )  
)  
Defendant )  
) **HEARD:** In writing

**PERELL, J.**

**REASONS FOR DECISION - COSTS**

[1] In an occupier’s liability action, the Defendant, the Cadillac Fairview Corp. Ltd., brought a motion for a summary judgment. I dismissed the summary judgment motion, and I granted the Plaintiff, Stephen Drummond, judgment with damages to be determined.<sup>1</sup>

[2] In my decision, I directed that the parties could make costs submissions with respect to the costs of the action to date including the summary judgment motion.

[3] Mr. Drummond requests costs of \$21,784.14 inclusive of HST plus disbursements of \$7,127.43.

[4] Cadillac Fairview submits that the discretion of the trial judgment should not be disturbed and that the costs award should be only for the summary judgment motion. Further, it submits that given the relative simplicity of the summary judgment motion and the expectations of the parties about the costs of a summary judgment motion, the appropriate award should be in the range of \$10,000 all inclusive.

[5] I disagree. The only outstanding issue in this action is the matter of the assessment of damages. To award costs for the action to date is appropriate and it will facilitate the prospects of any settlement of the balance of the action. For the remaining issue of the quantification of damages, the trial judge will be unfettered in his or her discretion to award costs for the trial of

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<sup>1</sup> *Drummond v. The Cadillac Fairview Corp. Ltd.*, 2018 ONSC 4509

that issue.

[6] There is no dispute that as the successful party on the summary judgment motion, Mr. Drummond is entitled to an award of costs on a partial indemnity basis. Having regard to the objections made by Cadillac Fairview, discussed below, in my opinion, the appropriate costs award is \$18,500 inclusive of HST for counsel fee and \$7,127.43 for disbursements.

[7] Cadillac Fairview makes the prototypical and easy to say submission that the summary judgment motion was simple and unnecessarily complicated by Mr. Drummond's decision to proffer expert evidence from Stephen Summerville on the standard of care of security guards, which expert report included an analysis of Cadillac Fairview's discovery witness and the inclusion of excerpts from the discovery evidence. Cadillac Fairview submits that Mr. Summerville's evidence, which was ultimately ruled inadmissible made it necessary to respond to misleading omissions of discovery evidence in Mr. Summerville's affidavit. Thus, Cadillac Fairview claims a setoff of \$2,048.69 (9.8 hours at an hourly rate of \$185, plus HST) for its legal expense in responding to Mr. Summerville's evidence.

[8] I see no basis for a setoff and apart from making a general reduction in Mr. Drummond's claim for costs, I make no deduction on account of Mr. Summerville's evidence. The summary judgment motion was not simple. Although Mr. Summerville's evidence ultimately was not productive, it was a reasonable decision to retain Mr. Summerville and to proffer his evidence. Cadillac Fairview's summary judgment motion went to the heart of the case on liability, and Mr. Drummond was required to put his best foot forward. If the action were to go to trial, Mr. Summerville would have been a part of that case. I would make no deduction on account of Cadillac Fairviews' success in neutralizing Mr. Summerville's evidence.

[9] Cadillac Fairview objects to the disbursement of \$1,323 for legal research for costs incurred using WestLaw. The case law is divided on whether a disbursement for legal research is recoverable on a party and party assessment of costs. One view is that the disbursement is a lawyers' overhead expense that is not recoverable as a disbursement.<sup>2</sup> The other view is that it is a reasonable and appropriate disbursement and recoverable as costs from a losing opponent.<sup>3</sup>

[10] My own view is that the hours spent on legal research is recoverable both as a component of counsel fee and as a disbursement. The reality is that computer-assisted legal research is a necessity for the contemporary practice of law and computer assisted legal research is here to stay with further advances in artificial intelligence to be anticipated and to be encouraged. Properly done, computer assisted legal research provides a more comprehensive and more accurate answer to a legal question in shorter time than the conventional research methodologies, which, however, also remain useful and valuable. Provided that the expenditure both in terms of lawyer time and computer time is reasonable and appropriate for the particular legal problem, I regard computer-assisted legal research as recoverable counsel fee item and also a recoverable disbursement.

[11] Cadillac Fairview also submits that the claim for time incurred at examinations for

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<sup>2</sup> *Brown v. Canada (Attorney General)*, 2013 ONSC 6887.

<sup>3</sup> *Marin v. Ontario (Ombudsman)*, 2017 ONSC 3333; *Austin Pharma Drugs Ltd. v. Albion Kipling Medical Building Corp.*, 2012 ONSC 4044; *Goulimis Construction Ltd. v. Smith*, 2014 ONSC 2155 (Master).

discovery is excessive and the hourly rates of the senior and junior lawyer engaged on the file were excessive.

[12] I disagree, but I do believe that the costs claim is modestly beyond the reasonable expectations of the unsuccessful party. I, therefore, award a counsel fee for legal services to date of \$18,500, all inclusive, plus disbursements of \$7,127.43.

[13] Order accordingly.

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Perell, J.

Released: September 13, 2018

**CITATION:** Drummond v. The Cadillac Fairview Corp. Ltd., 2018 ONSC 5350  
**COURT FILE NO.:** CV-16-560673  
**DATE:** 2018/09/13

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**Stephen Drummond**

Plaintiff

– and –

**The Cadillac Fairview Corporation Limited**

Defendant

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**REASONS FOR DECISION – COSTS**

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PERELL J.

Released: September 13, 2018