

CITATION: Park v. Park, [2025] ONSC 4238
NEWMARKET COURT FILE NO.: CV-23-00002213
DATE: 20250717

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

YOUNG-HO PARK also known as
YOUNGHO PARK

Plaintiff

– and –

KYUNG SAE PARK also known as G.S.
PARK

Defendant

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) Ryan Wozniak, counsel for the Plaintiff
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) S. David Hwang, counsel for the Defendant
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) **HEARD:** June 18, 2025
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REASONS FOR DECISION ON COSTS

DE SA J.:

- [1] The Defendant was examined for discovery on June 20th, 2024 and gave numerous undertakings.
- [2] The Defendant’s answers to undertakings were due on August 20th, 2024, as required by rule 31.07(1) of the *Rules of Civil Procedure*.
- [3] On May 15th, 2024, approximately one month prior to examinations for discovery, the plaintiff’s lawyer, Ryan Wozniak (“Wozniak”) served the Defendant’s lawyer, David Hwang (“Hwang”), with a draft of the Plaintiff’s amended statement of claim along with a draft consent.
- [4] Hwang did not respond until July 3rd, 2024, when he sent an email to Wozniak stating that he did not have instructions to consent to the amendment, but “If your client feels the need to amend their claim, I look forward to being served with your motion materials.”
- [5] The Plaintiff booked this motion on January 16th, 2025 to amend its claim, and for answers to the outstanding undertakings. The Plaintiff served his motion record on April 29th, 2025.

- [6] The Defendant did not answer his undertakings until May 20th, 2025, some 11 months after he had given his undertakings, and well after the Plaintiff had prepared its materials for the motion.
- [7] On May 27th, 2025, Hwang emailed Wozniak consenting to the Plaintiff filing the amended statement of claim.
- [8] On May 28th, 2025, Hwang emailed Wozniak refusing to pay costs to the Plaintiff in respect of this motion.
- [9] The Defendant did not provide his consent to amend the claim or answer his undertakings until after the plaintiff served his motion materials. The Plaintiff now seeks its costs on a partial indemnity basis in the amount of \$1750.

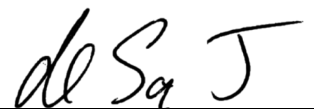
Analysis

- [10] Costs awards under section 131 of the *Courts of Justice Act*, R.S.O. 1990, c C. 43, are highly discretionary.
- [11] Rule 57.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, sets out the factors to be considered including the amount of costs an unsuccessful party would expect to pay and the complexity of the proceeding. Assessing costs is not simply a matter of arithmetic, where dockets are tabulated. The overarching principle is that the court's assessment should be fair and reasonable in light of all the circumstances: see *Beaver v. Hill*, 2018 ONCA 840; *Boucher v. Public Accountants Council for the Province of Ontario* (2004), 2004 CanLII 14579 (ON CA), 71 O.R. (3d) 291 (C.A.); and *Moon v. Sher* (2004), 2004 CanLII 39005 (ON CA), 246 D.L.R. (4th) 440 (C.A.).
- [12] Section 57.01 provides as follows:
 - 57.01 (1) In exercising its discretion under section 131 of the *Courts of Justice Act* to award costs, the court may consider, in addition to the result in the proceeding and any offer to settle or to contribute made in writing,
 - (0.a) the principle of indemnity, including, where applicable, the experience of the lawyer for the party entitled to the costs as well as the rates charged and the hours spent by that lawyer;
 - (0.b) the amount of costs that an unsuccessful party could reasonably expect to pay in relation to the step in the proceeding for which costs are being fixed;
 - (a) the amount claimed and the amount recovered in the proceeding;
 - (b) the apportionment of liability;
 - (c) the complexity of the proceeding;

- (d) the importance of the issues;
- (e) the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding;
- (f) whether any step in the proceeding was,
 - (i) improper, vexatious or unnecessary, or
 - (ii) taken through negligence, mistake or excessive caution;
- (g) a party's denial of or refusal to admit anything that should have been admitted;
- (h) whether it is appropriate to award any costs or more than one set of costs where a party,
 - (i) commenced separate proceedings for claims that should have been made in one proceeding, or
 - (ii) in defending a proceeding separated unnecessarily from another party in the same interest or defended by a different lawyer; and
- (i) any other matter relevant to the question of costs. R.R.O. 1990, Reg. 194, r. 57.01 (1); O. Reg. 627/98, s. 6; O. Reg. 42/05, s. 4 (1); O. Reg. 575/07, s. 1.

Application to the Facts of the Case

- [13] In the circumstances here, the consent to amend the claim and undertakings were provided well after the materials had to be prepared. I agree that the Plaintiff is entitled to reasonable indemnification for their costs to prepare its motion.
- [14] The amount sought on a partial indemnity basis (\$1750) is also not unreasonable given the materials filed. Given the Defendant's consent, however, I am prepared to reduce the costs to some degree. Costs are awarded in the amount of \$1500.
- [15] This amount is inclusive of disbursements and HST and is to be paid within 30 days and will accrue post-judgment interest in accordance with s. 129(1) of the *Courts of Justice Act*.



Justice C.F. de Sa

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Released: July 17, 2025