

**CITATION: ARUNASALAM v. STATE FARM MUTUAL AUTOMOBILE INSURANCE  
COMPANY, 2015 ONSC 5977  
COURT FILE NO.: CV-09-393666  
MOTION HEARD: AUGUST 19, 2015**

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Manokar Arunasalam and Panneerselvy Ganeshan  
  
v.  
  
State Farm Mutual Automobile Insurance Company

**BEFORE:** MASTER R.A. MUIR

**COUNSEL:** Shanti Barclay for the moving party/defendant  
Michael Katzman for the responding parties/plaintiffs

**SUPPLEMENTARY REASONS FOR DECISION - COSTS**

[1] On August 19, 2015 I heard a motion brought by the defendant for an order requiring the plaintiff Manokar Arunasalam to attend at defence orthopaedic and psychiatric examinations. I released my reasons for decision on August 20, 2015. I granted the relief requested by the defendant and asked for written costs submissions. I have now received and considered the parties' costs submissions.

[2] The defendant asks for partial indemnity costs of \$5,000.00 plus disbursements of \$1,600.00. The defendant takes the position that it was the successful party on this motion and that the plaintiff unnecessarily lengthened the time required for the motion by conducting an unnecessary cross-examination.

[3] The plaintiffs submit that there should be no order for costs. Alternatively, the plaintiffs suggest that costs should be in the cause. They argue that this motion was not scheduled in accordance with the practice direction and that the defendant acted unreasonably when it opposed the plaintiffs' adjournment request at the attendance before Master Pope on May 28, 2015. The plaintiffs also argue that their opposition to this motion was not unreasonable given the conflicting authorities and the fact that the motion was decided on the basis of authorities not cited by the defendant.

[4] The court's general authority to award costs as between parties to litigation is found in section 131(1) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, which provides that costs are in

the discretion of the court. Rule 57.01(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 (the "Rules") sets out a non-exhaustive list of factors the court is to consider when awarding costs. Rule 1.04(1.1) is also applicable. It requires the court in applying the Rules to make orders that are proportionate to the importance and complexity of the issues and to the amount involved in the proceeding. Rule 57.03 provides that in most cases the costs of a motion should be fixed by the court and made payable within 30 days.

[5] When dealing with costs, the overall objective for the court is to fix an amount that is fair and reasonable for the unsuccessful party who generally must pay the costs of the successful party. See *Zesta Engineering Ltd. v. Cloutier*, [2002] O.J. No. 4495 (C.A.) at paragraph 4 and *Boucher v. Public Accountants Council for the Province of Ontario*, [2004] O.J. No. 2634 (C.A.) at paragraph 26. In *Clarington (Municipality) v. Blue Circle Canada Inc.*, 2009 ONCA 722 the Court of Appeal stated as follows at paragraph 52:

Rather than engage in a purely mathematical exercise, the judge awarding costs should reflect on what the court views as a reasonable amount that should be paid by the unsuccessful party rather than any exact measure of the actual costs of the successful litigant.

[6] These are the factors and principles I have considered and applied in determining the costs issues on this motion.

[7] In my view, the defendant is entitled to costs. It was completely successful on the substantive issues argued on this motion. I also see no reason to depart from the usual practice of ordering costs to be paid within 30 days. I do agree with the plaintiffs that there should be some reduction to the costs requested by the defendant to account for the initial scheduling difficulties and the appearance before Master Pope. The defendant's amended motion record was served on short notice and the plaintiffs wanted to cross-examine. The adjournment request should not have been opposed. However, it appears that the defendant has already made some allowance for these factors in its costs submissions. It seeks costs of \$5,000.00 plus disbursements while its costs outlines set out costs of more than \$11,000.00. The plaintiffs did not provide the court with a costs outline. I therefore assume that their costs are equal to or greater than the defendant's costs.

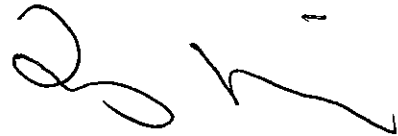
[8] It is true that there appear to be conflicting authorities with respect to the necessity for the defendant to seek leave to bring this motion. However, I do not view that fact as sufficient, in the circumstances of this motion, to justify an order denying costs to the successful party. The plaintiffs were certainly well aware of the conflicting authorities when they decided to oppose this motion. Mr. Wilson appeared as counsel on one of the cases that held that leave was not required in similar circumstances. The plaintiffs knew that there was a risk that the line of authorities they relied upon would not be followed by the court.

[9] I have therefore concluded that it is fair and reasonable for the plaintiffs to pay the defendant's costs of this motion. The fees requested in the amount of \$5,000.00 appear to be reasonable in the circumstances of this motion. The materials filed included affidavits, factums and authorities. Cross-examinations were held. The relief requested was vigorously opposed by the plaintiffs. The plaintiffs have not provided the court with a costs outline.

[10] However, I am not prepared to award costs for the disbursement incurred in connection with the cancelled defence medical appointment of August 13, 2015. In my view, the defendant should have cancelled or rescheduled that appointment in a timely manner when it became clear that this motion would not be heard until August 2015.

[11] I am also not prepared to make any findings of misconduct on the part of the defendant or its counsel. The plaintiffs make some very strong suggestions of improper and even dishonest behaviour on the part of the defendant and its counsel. As I have stated above, I view the defendant's opposition to the adjournment request as unreasonable. It is also my view that the defendant should have been more cooperative when it came to scheduling the motion. However, I do not view this conduct as dishonest or amounting to sharp practice.

[12] For these reasons, I have concluded that it is fair and reasonable for the plaintiffs to pay the defendant's costs of this motion fixed in the amount of \$5,000.00, inclusive of taxes and disbursements. These costs shall be paid within 30 days.



---

Master R.A. Muir

**DATE:** September 28, 2015