

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**BRAMPTON
SMALL CLAIMS COURT**

BETWEEN:

**GOLDI PRODUCTIONS LTD.,
JOAN GOLDI and JOHN GOLDI**

Plaintiff(s)
(Respondents)

- and -

BELL MEDIA INC.

Defendant(s)
(Moving Party)

COSTS ORDER

1. On June 21st, 2016 I released my Reasons for Decision on the motion of Bell Media Inc. seeking an Order dismissing the Plaintiff's Claim without leave to amend.
2. The moving party was successful and the Claim of Goldi Productions Ltd. and John and Joan Goldi was in fact dismissed without leave to amend.
3. The motion was heard by me on two separate occasions. A voluminous amount of material was reviewed and oral argument occupied over one half day. As the successful party Bell Media Inc. is entitled to its reasonable costs for the preparation and hearing of this motion. Rule 15.07 of the Rules of the Small Claims Court sets the limit for costs on a motion at \$100.00. Bell Media maintains that there are special circumstances that bring the costs of this motion outside the usual \$100.00 limit. I must agree. This was a complicated motion that addressed issues of defamation, slander of title and negligence. Section 131 of the Courts of Justice Act gives this court the discretion to determine the appropriate costs in a proceeding.

4. The plaintiffs ask that that Rule 15.07 be observed and that no more than \$100.00 costs be awarded against them. The claim was for \$25,000.00 and an award of costs pursuant to section 29 of the Courts of Justice Act is limited to 15% of the amount claimed unless the behavior of a party warrants and increase above that amount. There is no behavior here that would warrant an increase of costs beyond the 15% set out in the legislation.
5. In their costs submissions counsel for Bell Media Inc. included a costs outline. Bell Media is seeking compensation for over 52 hours of counsel's time, including 10 hours for reviewing the claim and preparing the defence. The balance of counsel time relates to preparation for and arguing the motion. As this was a Rule 12 motion that resulted in the final determination of the matter it is appropriate that the successful party be compensated not only for preparation and arguing of the motion but for, in this case, preparation of the defence as well.
6. Counsel fees as set out in the moving party's costs outline total \$9,159.90 plus HST for a total of \$10,450.69 sought for fees. They also seek disbursements of \$475.22. The 15% limit imposed by the Courts of Justice Act would cap legal fees at \$3,750.00. I must also consider the consequences of any offers to settle made in accordance with the Rules. In that regard Bell Media Inc. did indeed serve an offer to settle on the Goldis on September 11th, 2015. The offer was for a consent to dismissal of the action on a without costs basis. The Goldis were asked, as a term of the offer, to sign a standard release in favour of Bell Media Inc. The offer does not impose any terms of confidentiality and was left open for 5 minutes after the commencement of the defendant's motion to strike. Certainly this offer meets the criteria under Rule 14.07 in that it was delivered at least seven days before the hearing of the trial, or, in this case the motion.
7. I note that the offer was accompanied by a covering letter dated September 11, 2015, directed to the plaintiffs. The letter enclosed the Decision of Deputy Justice Goldstein in *Otavnik v CTVGLOBEMEDIA*, a remarkably similar claim to the within claim dismissed by me. The outcome was the same. Deputy Judge Goldstein dismissed all of the plaintiff's claims against CTV related to the Canada am broadcast of February, 2014. This is the same broadcast which was the subject matter of the within claim. The September 15th letter put the plaintiffs on notice that if the offer is not accepted Bell Media Inc. intended to bring a Rule 12.02 motion to strike the claim without leave to amend. It also explained to the Goldis, being self-represented parties, the cost consequences of Rule 14.07.
8. One of the factors I must consider in exercising my discretion as to costs is whether the losing party could have anticipated the cost consequences arising out a loss. Certainly in this case the funds sought as damages were substantial. \$25,000.00 is the monetary jurisdiction of this court. The issues to be tried are indeed complicated. Defamation actions are among the most technical and complicated matters entertained by the civil courts. Given that the Goldis anticipated calling over 50 witnesses to trial and

considering the voluminous material already filed by them, they must have anticipated that this trial would occupy at least a week of court time, a very expensive proposition indeed for the losing party.

9. Even if I were to discount the counsel fees sought for review of the claim and preparation of the defence, in other words, those costs not directly related to the motion, the actual partial indemnity fees set out in the costs outline are well in excess of \$3,750.00, being 15% of the amount of the claim. A costs award of \$3,750.00 represents partial indemnity recovery for approximately 14 ½ hours of counsel time, which is not unreasonable under the circumstances given the material filed, two attendances to argue the motion and the nature of the claim Bell Media sought to have dismissed.
10. With respect to the consequences of the offer to settle referenced in paragraphs 6 and 7 herein I must consider the Divisional Court decision of Justice LeMay in *Prohaska v Howe*, 2016 ONSC 48 (CanLII). Justice LeMay considered and applied the reasoning in *S & A Strasser v. Richmond Hill (Town)* (1990) CanLII 6856 (ON CA). The Court of Appeal in *Strasser* noted that the wording under Rule 49 of the *Rules of Civil Procedure* (dealing with the cost consequences of an offer to settle) and Rule 14 of the Rules of the Small Claims Court are exactly the same in their operative provisions and that Court held that Rule 49 cost consequences are not triggered where an action is dismissed. In *Prohaska*, at paragraph 62 Justice LeMay stated; "In this case, the words of the Small Claims Rules are precisely the same as those in the *Rules of Civil Procedure*. As a result, I am bound by the Court of Appeal's findings in *Strasser*. Therefore the rule that permits the doubling of costs does not apply when the plaintiff fails to recover anything."
11. In this case it was a defendant's motion to strike, not a plaintiff's motion for summary judgement. However I am applying the same logic to the case before me; that is, the costs consequences of an offer to settle are not triggered when an action is dismissed.
12. I am setting costs at \$3,750.00. With respect to the disbursements sought, I will allow the disbursements set out in the written costs submissions totaling \$475.22. The cost order of Deputy Judge Bobesich for \$100.00 ordered payable in the cause is also a cost I must impose upon the Goldis. Accordingly, the total costs ordered are as follows: **The plaintiffs shall pay to the defendant \$ 3,850.00 in costs and \$475.22 in disbursements. This orders bears post judgment interest from today's date forward at the Courts of Justice Act rate.**

Dated this 3rd day of August, 2016.

B. Martel

B. MARTEL, DEPUTY J.