

MAXWELL V LUCK and PUROLATOR COURIER

Heard: by submissions in writing

For plaintiff: R. Littlejohn and M. Lemieux

For defendants: M. Grant and D. Craig

TRANSCRIPTION of ENDORSEMENT of Dec. 24, 2014

I have reviewed both submissions and the reply. I have reflected my own agreement with the defendant on the plaintiff's tendency to use block fees which of course can lead billing beyond what is reasonable for the case. I do allow some costs for the application for AB benefits. It is an application the plaintiff under statutory compulsion to bring.

Moodie v Greenaway 1997 CarswellOnt 6388

Finally, I view the defendant's "approach" to their offers and to the whole issue of resolution as muted at best. Neither offer shows any reasonable attempt to resolve this case. The stance at mediation of attending on the day appointed on the basis of no one's offer to be forthcoming.

I view my task as fixing costs having in mind the principles of reasonable value for work that is required. It is not a line-by-line assessment but a bringing to bear one's years of experience as a trial judge on a bill of costs having in mind also the principle of legitimate expectations of a losing party. However in this case I intend to follow *Kearns v Caddy* in applying a remedial penalty. This was a hard-nosed position which the insurer must realize would attract some censure by way of costs. See also *Ross v Bacchus* [2013] ONSC 7773, Ramsay J.

I assess \$50,000 on this account.

| | |
|---|------------------|
| Fees are fixed in the sum of | \$150,400 |
| Disbursements are fixed in the sum of | \$ 56,332 |
| Remedial Penalty (See <i>Kearns v Caddey</i> 2010 ONCA 565 at para 28.) | <u>\$ 50,000</u> |
| | \$256, 732. |

The defendants shall pay to the plaintiff forthwith her costs fixed in the sum of \$256,732. plus HST on the taxable parts.



"P.H. Howden"

Plaintiff

Defendants

Dec. 24 2014

I have reviewed both submissions & the reply & have accepted my own agreement with the defendant on the plaintiff's ~~costs~~ ^{costs} thinking to ~~not~~ ^{not} block fees which of course ~~is~~ ^{is} having my ~~costs~~ ^{costs} reasonable for the case. I do allow some costs for the application for A.B. benefits. I ~~do~~ ^{do} an application the plaintiff is under ~~statutory~~ ^{statutory} compensation to bring. Medic v Greenway 19, 999 Carswell Ont 6788. Finally, I ~~mean~~ ^{mean} the defendant's ~~costs~~ ^{costs}

~~There is no case law in Ontario a direct quote of reasonable costs the cost of the defendant's application to approach to finally. Finally, I mean the defendant's application of respite as their offers and to whole issues of respite reasonable. I mean offer shows my reasonable attempt to resolve this case. This statement made later of abandoning in its ~~best~~ ^{best} day appointed on the best of my money offer to the following I mean my ~~costs~~ ^{costs} as fitting costs bearing in mind the principle of reasonable value for work that is required. It is not a time-by-time assessment but a ~~total~~ ^{total} assessment for a total cost. (C.V. 101)~~

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceedings commenced at Barrie

PM. /

PLAINTIFF'S COST
SUBMISSIONS

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Solicitor for the Plaintiff
(File No.: 07035)

on a bill of costs. Having in mind also the principle of legalizing
 opposition party. However in this case I intend to
 follow Kear v Caddy in applying a remedial penalty. This was a
 hand-made position which the inner court is ready to
 would attract ~~the~~ such an award. See also Russo v Basbas
 2013 ONSC 7773.

Parway J. I assess \$50,000 on this account.

| | | |
|--|-------|---------------|
| Fees are fixed in the sum of | \$ | 150,400.00 |
| Disbursements are fixed in the sum of | \$ | 56,332.00 |
| Remedial Penalty (see <u>Kear v Caddy</u> 2010 ONSC 565) at para 28. | \$ | 50,000.00 |
| | Total | \$ 256,732.00 |

The defendants shall pay forthwith to the plaintiff her costs
 in the sum of \$256,732.00 plus HST on the total portion.

