

Case Name:

**Vespra Country Estates Ltd. v. 1522491 Ontario Inc. (c.o.b.
Pine Hill Estates)**

Between

**Vespra Country Estates Limited, Plaintiff, and
1522491 Ontario Inc. o/a Pine Hill Estates, Bravakis and
Associates Ltd., Peter Bravakis and 981772 Ontario Inc. o/a
Hassey Realty Corp., Defendants**

[2012] O.J. No. 121

2012 ONSC 330

Court File No. 04-B7344

Ontario Superior Court of Justice

R.C. Boswell J.

Heard: November 9, 2011; with cost submissions delivered by
January 10, 2012.

Judgment: January 12, 2012.

(10 paras.)

Counsel:

Richard P. Quance and Davide V. Cortinovis, for the Plaintiff.

Paul J. Daffern, for the Defendants.

RULING ON COSTS

1 R.C. BOSWELL J.:-- On December 15, 2011, I released a ruling on motions brought by each side seeking security for costs. I made an order requiring the Plaintiff to post \$125,000 in security by February 1, 2012. I dismissed the Plaintiff's motion for security because I was satisfied that the Plaintiff already has security for costs in a sufficient sum. The full reasons for my decision are reflected in my ruling, reported at 2011 ONSC 7446.

2 I invited the parties to make submissions on costs.

3 The Defendants seek \$18,618.92, inclusive of HST. The Plaintiff suggests that figure be reduced to \$11,518.92, inclusive of HST.

4 The award of costs is governed by section 131 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and by Rule 57.01 of the *Rules of Civil Procedure*. Section 131 provides for the general discretion to fix costs. Rule 57.01 provides a measure of guidance in the exercise of that discretion by enumerating certain factors that the court may consider when assessing costs. Ultimately, in fixing an amount for costs, the overriding principles are fairness and reasonableness: *Boucher v. Public Accountants Council for the Province of Ontario* (2004), 71 O.R. (3d) 291 (C.A.); and *Moon v. Sher* (2004), 246 D.L.R. (4th) 440 (Ont. C.A.).

5 There is no doubt that the Defendants were successful on the motions. No argument is made that there should be any departure from the usual rule that costs follow the event. I find that the Defendants are entitled to their costs. No argument was advanced that costs should be assessed other than on a partial indemnity scale and, in my view, that is the appropriate measure of costs in this instance.

6 While the Plaintiff does not take issue with entitlement to costs, it questions the quantum sought, for two principal reasons: (1) there has been some duplication of effort, given that the Defendants changed counsel after the motion had been initiated but before it was argued; and (2) excessive sums have been charged for preparation and travel.

7 Generally, the court ought not to second guess the time spent by counsel, as observed by Nordheimer J. in *Basedo v. University Health Network*, [2002] O.J. No. 597 (S.C.J.) where he said, "it is not the role of the court to second guess the time spent by counsel unless it is manifestly unreasonable in the sense that the total time spent is clearly excessive or the matter has been overly lawyered."

8 I do not propose to dissect the time spent on various aspects of the motions. I accept that there was some duplication of effort due to the transfer of the file from one counsel to another. While present counsel is certainly entitled to charge his client for work that he had to perform to get up to speed on the motions, the Plaintiff should not be obliged to cover that cost. I also accept that travel costs are frequently discounted by 50%. Having said that, it is important to recognize that the assessment process is ultimately not a mechanical exercise, as appellate courts have regularly stated: see for instance, *Gratton-Masuy Environmental Technologies Inc. (c.o.b. Ecoflow Ontario) v. Building Materials Evaluation Commission*, [2003] O.J. No. 1658, at para. 17. Instead, the court must take a contextual approach, applying the principles and factors enumerated above, to settle on a figure that is fair and reasonable in all the circumstances

9 In my view, the overarching principle is proportionality. In other words, are the costs sought proportionate to the amounts in issue, the importance of the issues, the complexity of the motion, the time required to prepare and argue the motions, and the reasonable expectations that the losing party would have had in terms of its jeopardy with respect to costs? The fixing of a proportionate amount is more art than science. It is the product of the court's experience in hearing and adjudicating on motions, of rating the complexity and significance of the motions now before the court as against other motions that come before

the court on a daily basis, together with the guidance and submissions of counsel regarding the specific features of this case.

10 This was an important motion to both sides. The amount of security I have ordered provided is substantial. Both sides put significant time and effort into preparing for the motion. It was thoroughly prepared and well argued. That said, it was a half-day argument, without cross-examinations and on an issue where the law is relatively well settled. In my view, all things considered, an appropriate sum for costs is \$14,000.00, all inclusive, and I order the Plaintiff to pay that sum within 30 days.

R.C. BOSWELL J.

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