

**CITATION:** McKinlay v. Savary, 2020 ONSC 1760  
**PETERBOROUGH COURT FILE NO.:** CV-322/16SR  
**DATE:** 20200408

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

<b>BETWEEN:</b>	)	
	)	
Michael John McKinlay and Virginia McKinlay	)	
	)	
Plaintiffs/Responding Parties on Motion	)	Justin J. Robinson, for the
<b>– and –</b>	)	Plaintiffs/Responding Parties on the Motion
	)	
Cory Shane Savary, Kings Custom Homes also known as Kings Custom Homes Incorporated, Nancy Desjardine, and Frank Real Estate Ltd. o/a Royal Lepage Frank Real Estate Brokerage	)	
	)	
Defendants	)	Cory Shane Savary, Self-Represented
	)	Defendant and for King Custom Homes,
	)	Defendant/Moving Parties on the Motion
	)	
	)	
	)	<b>HEARD: By written submissions</b>

**COSTS ENDORSEMENT**

**H.K. O’Connell J.**

*Overview*

- [1] On January 31, 2020, I released my reasons in relation to the defendant and his company and the issue of whether a certificate of pending litigation should be discharged. I found that the CPL would remain on title unless Mr. Savary paid into court \$22,500.00. It would be discharged if he made the payment into court.
  
- [2] I called upon the parties to provide submissions on costs. Both Mr. Savary and Mr. Robinson did so. This ruling is limited as it must be to the motion, and for costs thrown away on a date earlier when Mr. Savary requested an adjournment. Nothing in this endorsement is relevant to the costs of the action as time unfolds.

***Position of Mr. Robinson for the McKinlays***

- [3] Mr. Robinson seeks full indemnity recovery of \$21,286.95 for costs that his clients occasioned on this matter. He references Rule 57 and its componentry, as well as what is said to be an offer to settle, and the fact that what Mr. Savary seeks in costs is even more than what the McKinlays are seeking.
- [4] Finally, Mr. Robinson addresses the issue of proportionality.
- [5] The bill of costs sets out as well partial indemnity recovery and substantial indemnity recovery.
- [6] His submissions on costs encompass about 3.5 pages of content, plus dockets.<sup>1</sup>

***Position of Mr. Savary for himself and his company***

- [7] Mr. Savary filed his submissions on February 7, 2020. His submissions are also roughly 3.5 pages long and address issues that Mr. Savary believes are relevant to this matter.
- [8] He supplies a bill of costs as well, based on dockets provided to him by his previous counsel, as well as costs that he suggests he is entitled to, for his time preparing for and attending at court.
- [9] As with Mr. Robinson's submissions, I have considered Mr. Savary's position. Some of what Mr. Savary argues is premised on his belief that the court, previous to me hearing the motion, was deceived when it granted the CPL.
- [10] Mr. Savary seeks a total of \$32,715.87 inclusive of HST for his costs.

***Reasons***

- [11] Costs must be reasonable and fair and proportionate. Rule 57 guides the exercise. It *can be* that one person's costs can inform what costs should be ordered in favour of the successful side. Offers to settle must also be gauged against fairness and reasonableness.
- [12] I am dealing here with costs thrown away on one prior occasion when Mr. Savary requested an adjournment and costs before me on the motion. Mr. Robinson's clients were successful on the motion. Their position was vindicated: either keep the CPL on title or make the defendant, Mr. Savary and his company, pay monies into court.
- [13] This suggested relief was in fact contained in the factum of Mr. Savary's former counsel, which was before the court: either discharge the CPL or have monies paid into court.

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<sup>1</sup> Mr. Robinson's cost outline suggests \$3,339.45 in disbursements, but the bill of costs provides for disbursements inclusive of HST on applicable disbursements to be roughly \$1,000.00. I have therefore considered the \$1,000.00 to the actual amount.

- [14] This latter suggestion protects the value that the CPL is meant to protect.
- [15] It is trite that even with an offer to settle, which Mr. Robinson says his offer is equivalent pursuant to Rule 49, it must be considered in the context of reasonableness and fairness.
- [16] Mr. Savary's submissions are partially premised on what he believes is an injustice to him and his company, that extends back to the time that the CPL was issued by Sosna J. That event occurred in 2017.
- [17] Having said all of this, I find that costs payable by Mr. Savary and Kings Custom Homes, jointly and severally, should be in the total amount of \$6,000.00 inclusive of disbursements.
- [18] I cannot find that the motion of Mr. Savary was frivolous or vexatious. Nor can I find that the fees that he occasioned and seeks recovery for, without deciding whether he would be entitled to costs for the portion of time that he was self-represented had he been successful on this motion, are a standard of reasonableness or a guidepost to assess what the McKinlays' just desserts are on costs.
- [19] Finally, reference in Mr. Robinson's submissions that his clients are standing up for others as well, may be their belief, but it cannot otherwise inflate the costs that they are due as the successful parties on this motion.
- [20] Mr. Savary and the company that he controls will have the presumptive 30 days to pay these costs.



Justice Hugh K. O'Connell

**Released: April 08, 2020**

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Plaintiffs/Responding Parties on Motion

– and –

Cory Shane Savary, Kings Custom Homes also known as  
Kings Custom Homes Incorporated, Nancy Desjardine,  
and Frank Real Estate Ltd. o/a Royal Lepage Frank Real  
Estate Brokerage

Defendants

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**COSTS ENDORSEMENT**

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The Honourable Mr. Justice H. K. O’Connell

**Released: April 8, 2020**