



ONTARIO SUPERIOR COURT OF JUSTICE  
SMALL CLAIMS COURT

Toronto

ORDER OF THE COURT

Claim No. SC-21-00003579-0000

**BETWEEN**

MAITHEM MAHDI

Plaintiff(s)

and

FARAZ CHAUDHERY; FARAH SHEIKH

Defendants(s)

**BEFORE:** Deputy Judge MCNEELY

**HELD BY:**  In person  Videoconference  Teleconference  In writing  Hybrid

**DATE:** APR. 1 29, 2024  
April 04, 2024 at 10:00am

**EVENT TYPE:** Trial appealable

*Court Order*

**APPEARING:** (Names, emails, and phone numbers)

Plaintiff(s): MAITHEM MAHDI (maithem212@gmail.com)(647-281-7030)

Present

Representative:

Present

Defendant(s): FARAZ CHAUDHERY (fchaudhery@gmail.com)(647-668-1104)

Present

Representative: JUSTIN ROBINSON (jrobinson@jrlaw.ca) (647-391-1834)

Present

Defendant(s): FARAH SHEIKH (farahsheikh@rogers.com)

Present

Representative: JUSTIN ROBINSON (jrobinson@jrlaw.ca) (647-391-1834)

Present

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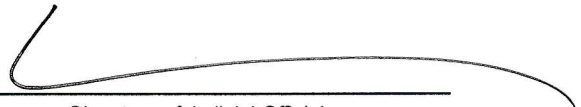
**ORDER OF THE COURT**

On April 29, 2024  
~~April 04, 2024~~

a hearing was held in the above matter and the following order was made:

[1] For those reasons set out in the attached "Reasons", the plaintiff is ordered to pay as costs of this action the sum of \$\$3,600 in fees plus HST of \$405.89 and disbursements of \$405.89 to the defendants on a joint and several basis. This costs Order bears interest at the Courts of Justice Act rate calculated from today's date.

April 29, 2024  
Date

  
Signature of Judicial Official  
A. M. Nery DT-LSW.

# Reasons

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[1] The defendant seeks an Order for costs of \$7,416.16 or in the alternative \$5,250 in fees plus HST and Disbursements of \$535.98. The defendant alleges that these amounts are warranted because the presentation of the plaintiff's case involved wasted time and among other factors defamed the defendants in the eyes of two spectators who sat in for part of the trial. As for the \$5,250 amount, this figure is cited as 15% of the face amount of the claim and is argued to be the "usual" costs award. As for the higher amount of fees- the \$7,416.16 this higher amount is said to be that the defendants should be entitled to full indemnity not partial indemnity costs.

[2] The plaintiff disputes these amounts. He complains that he was given only late notice of a photo of the ceiling water issue. He complains that the defendant's copy of the email on the pre-sale water representation omitted a key line found in the email put into evidence by the plaintiff. He disputes the amounts claimed. He submits that the defendants should be denied any costs by reason of the Tab 4 and Tab 6 document issues. It is possible, he suggests, that he might not have proceeded with the trial had he been given the ceiling water photo earlier than two days before trial and complains that his copy was not clear.

[3] Turning first to the amount of disbursements, I find that the sum of \$405.89 is a reasonable figure for disbursements. I have disallowed the \$130 lost wages as the conduct money is the compensation intended for witnesses.

[4] Turning to the amount claimed for fees, it is incorrect- a common error but still an error- that the 15% figure in the Courts of Justice Act cap on costs is somehow a costs minimum or a "usual" costs award. That percentage is a ceiling- a not to exceed cap- not a floor. It is incorrect to calculate fees as simply a percentage of the claim made and finding out who won.

[5] If a party fails to file dockets to show the actual hours expended and the rate claimed, it is left to the Court to assess the reasonable costs of the action by determining the trial time and the reasonable amount of time to prepare for trial. I assess 18 hours as a reasonable total partial indemnity preparation and attendance at this one-day trial figure. For a small claims court action, the partial indemnity rate is pegged at \$200 an hour. I, therefore, fix the reasonable fees on partial indemnity rate and basis as 18 hours times \$200 or \$3,600 plus HST on that amount.

[6] I fix the defendants' total costs and disbursements on partial indemnity basis at \$3,600 plus \$468 HST plus disbursements of \$405.89. The total of these three components is: \$4,473.89.

[7] I have carefully considered the arguments presented by the plaintiff. I agree that he was not inefficient or wasted any time in presenting his case. I agree that there is no full indemnity award justified because two strangers sat in the courtroom during the trial. He is correct that he cannot control who comes in. And the words exchanged at a trial are not actionable in any event. I find no misconduct by the plaintiff. He had a point of view and was not successful but that does not mean that he misconducted himself in any way in the action.

[8] The omission of the water representation in the defendant's book of documents is not a reason to deny costs. The error was not proven to be intentional. The male defendant testified when he gave his evidence that the plaintiff's version of the document, already in evidence, was the only accurate version.

[9] Both parties identified the ceiling water issue ( which was disclosed pre -sale) as irrelevant to the back wall water issue during the trial. There was no complaint to the contrary. There was no request for

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adjournment. There was no complaint about disclosure during the trial. I do not see this alleged disclosure issue on Tab 6 as justifying the defendants being denied an award of their partial indemnity costs of this action.