

COURT FILE NO.: CV-21-00662176-0000

DATE: 20231106

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Srinivasan Giduturi, Plaintiff

AND:

LG Electronics Canada Inc., Defendant

BEFORE: Dineen J.

COUNSEL: Andrew Monkhouse and Reshida Darrell, for the Applicant

Matthew Dewar and Katherine Golobic, for the Respondents

HEARD: In writing

ENDORSEMENT ON COSTS

- [1] This wrongful dismissal trial was conducted according to the simplified procedure. On June 12, 2023, I awarded the plaintiff a period of 12 months reasonable notice less amounts previously paid. The trial took a full day with three witnesses cross-examined on their affidavits. Written submissions on the law were prepared after the fact.
- [2] The plaintiff seeks the statutory maximum award of costs of \$50,000 in addition to HST and \$3,837.12 in disbursements. He relies on Rule 49 offers of \$44,250.48 (the plaintiff's calculation for a 12 month notice period) on January 10, 2022, \$26,022.69 on April 21, 2022, and \$15,000 on November 10, 2022 in arguing that substantial indemnity costs should be awarded after the first offer was made. He submits a bill of costs for full indemnity in the amount of \$95,682.19. The plaintiff has discounted some duplicated hours between his counsel and paralegals.
- [3] The defendant submitted a full indemnity bill totalling \$54,692. It concedes that the plaintiff beat its second and third Rule 49 offers but disputes that he is entitled to substantial indemnity costs following his first offer on the basis that the April 21, 2022 did not expressly state that the January 10 offer remained open and it is thus deemed to have been withdrawn, relying on the Court of Appeal's decision in *Diefenbacher v. Young* (1995) 22 O.R. (3d) 641. It argues that the plaintiff's hours docketed are excessive for many of the procedural steps taken and notes that they substantially exceed the defence's hours for the same tasks. It further notes that the plaintiff made unsuccessful claims for *Human Rights Code* damages and punitive and aggravated damages, the former of which was pursued until less than a month before trial. It submits that a total costs order of \$45,069.30 would be reasonable and seeks a reduction in the range of \$5,000 from that amount for costs thrown away on the abandoned claims.

- [4] A number of decisions of this Court have observed that *Diefenbacher* appears to be in conflict with the Court of Appeal's earlier decision in *Mortimer v. Cameron* [1994] O.J. No. 277, a decision that it does not reference. The Court of Appeal itself addressed the conflict in *Thomas and Bell Helmets Inc.* (1999) 126 O.A.C. 353 and concluded that the *Diefenbacher* panel had been unaware of the *Mortimer* decision. The *Thomas* decision found that Rule 49.13 is available in an appropriate case to award elevated costs following a Rule 49 offer that on the reasoning in *Diefenbacher* might be deemed to have been withdrawn by implication. I find that this reasoning is applicable to this case and that the plaintiff should receive substantial indemnity costs from the date of the first offer.
- [5] Considering the complexity of the case and the late withdrawal of the Human Rights Code damages and punitive and aggravated damages, I find that a fair and proportionate amount is \$45,000 in addition to H.S.T. and disbursements, resulting in a total costs award of \$54,687.12 plus pre-judgment interest.

A handwritten signature in black ink, enclosed within a dashed rectangular box. The signature is stylized and appears to read 'Dineen J.'.

Dineen J.

Date: November 6, 2023