

Defendants liable for costs of \$579,000 in \$58,000 claim (Gesualdi v. Conti)

Claim | Costs | Liability | Litigation | Litigation & Dispute Resolution

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Costs in Ontario court proceedings are generally awarded based on principles of success, proportionality, and the reasonable expectations of the parties. In this regard, courts will often look at the amount sought by a plaintiff in relation to any judgment obtained. In some cases, however, a court may award costs that substantially exceed the amount of the judgment, as illustrated by *Gesualdi v. Conti*, 2025 ONSC 2169 (CanLII).

The costs decision arose after an eight-day trial where the court found that the defendants breached a contract to rebuild the engines of the plaintiff's two vintage Ferrari automobiles and were negligent in their efforts to do so: *Gesualdi v. Conti*, 2025 ONSC 1662 (CanLII).

While the plaintiff was awarded only \$58,710.54 in damages, he sought more than \$447,000 in costs.

Conversely, the defendants argued that the plaintiff should be required to pay them costs of \$243,052.90, because they were actually the successful party. The defendants' submission was that the plaintiff pursued an action that he knew was frivolous and vexatious, devoid of merit, and certain to fail.

The trial judge did not accept the defendants' characterization of the proceedings. The plaintiff was completely successful at proving that the defendants breached the contract and performed their work negligently. The plaintiff was unsuccessful on a claim for negligent misrepresentation but this consumed virtually no time at trial.

The court did not award damages to the plaintiff for a loss of capital value from the subsequent sale of the Ferraris but this did not mean that this portion of the claim was frivolous and vexatious or certain to fail.

Further, while the plaintiff abandoned a claim for loss of use of the Ferraris on the eve of trial, which was a relevant factor, the defendants did not demonstrate that they incurred any expenses responding to this claim. The trial judge noted that they did not retain an expert to critique or respond to the report of the plaintiff's damages expert and none of the defendants' affidavits addressed this aspect of the claim.

The defendants further argued that the costs ought to reflect the fact that the plaintiff obtained judgment within the monetary limit of Ontario's simplified procedure. However, the trial judge determined that it was reasonable for the plaintiff to have commenced and continued this proceeding under the ordinary procedure since he had a plausible, reasonable path to recover damages "far, far in excess" of the limit on damages in a simplified proceeding which was in place when the action commenced.

Moreover, the action would have been entirely ill-suited to the simplified procedure since it was complicated and required expert evidence. Among other issues, the simplified procedure limits trials to five days, but when the parties appeared for one of their six pre-trial conferences, they estimated that the trial would require 29 days of court time.

The plaintiff had also served an offer to settle the action for \$50,000 plus partial indemnity costs over one year before the start of trial. The defendants rejected this offer and instead offered to settle the action if the plaintiff paid them \$300,000 in costs.

Instead, the court ordered that the defendants pay the plaintiff's costs in that amount.

Gardiner Roberts

Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com

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The plaintiff's costs were reduced to \$300,000 from the \$447,000 claimed, as the trial judge viewed that an unwarranted amount of time was spent on the case by counsel for each side. Even if the plaintiff permitted his counsel to spend that amount of time on the case, the losing party must not be faced with an award that does not reasonably reflect the amount of time and effort that was warranted by the proceedings: *Gratton-Masuy Environmental Technologies Inc. v. Building Materials Evaluation Commission*, 2003 CanLII 8279 (ON SCDC), at paragraph 17.

The defendants were also found liable for costs of a third party claim which was dismissed in its entirety. The plaintiff had retained the third parties for bodywork restoration and assembly of the Ferraris. In the trial judge's view, the third party action should never have been brought as there was no evidence to suggest that the third parties could be liable for the defendants' breach of contract or their negligence relating to the engine work.

The defendants argued that the plaintiff should be responsible for paying the third parties' costs. However, they provided no case law in support of their proposition that a successful plaintiff should be required to pay the costs of a third party who successfully defended the third party claim instead of the defendant who lost both parts of the proceeding.

The general rule is that a plaintiff who is unsuccessful against the defendant will not be charged with the costs of the third party because the plaintiff did not sue the third party, did not want him or her in the case, and was not responsible for bringing them into the litigation: e.g. *Drady v. Canada (Attorney General)*, 2008 CanLII 1945 (ON SC), at paragraphs 21-25.

The trial judge did not accept the defendants' submission that the third party proceedings followed naturally and inevitably from the plaintiff's action. Rather, it was the defendants who chose to bring the third parties into the proceeding. This action ought to have been decided as a contest between the plaintiff and the defendants.

Further, the third parties delivered offers to settle for a dismissal without costs as early as August 2017 and again in October 2021. In hindsight, those offers should have been accepted by the defendants.

The trial judge concluded that it was fair and reasonable to require the defendants to pay costs to the third parties fixed in the amount of \$279,950.91.

In the result, the defendants were found liable for payment of costs to the plaintiff and third parties of more than \$579,950, in addition to the plaintiff's judgment for \$58,000. The case illustrates that the costs consequences of disputing a claim through a lengthy trial may vastly dwarf the actual amount of the judgment obtained. A PDF version is available for download [here](#).

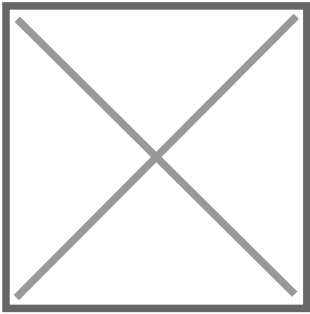
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Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com

Author



James R.G. Cook

Partner

416.865.6628

jcook@grllp.com

Gardiner Roberts

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22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
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