

CITATION: Zigomitros v. Gomez, 2018 ONSC 4845

COURT FILE NO.: CV-10-402387

MOTION HEARD: 20180808

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Gus Zigomitros, Marios Zigomitros and Frank Harbalis, Plaintiffs

AND:

Zachary Gomez, Margot Nelles, Ramon Gomez, Nick Danikas, Georgia Danikas and Maria Danikas, Defendants

BEFORE: Master B. McAfee

COUNSEL: J. Van Allen, Counsel to the Lawyers for the Plaintiffs, Moving Parties

J. Legge, Counsel for the Moving Parties, the Defendants, Plaintiffs by Counterclaim, Zachary Gomez, Margot Nelles and Ramon Gomez

J. Sprague, Counsel for the Responding Parties, the Defendants Nick Danikas, Georgia Danikas and Maria Danikas

HEARD: August 8, 2018

ENDORSEMENT RE: COSTS

- [1] On April 27, 2018, the plaintiffs brought a motion for an order setting aside the order of the Registrar dismissing the action for delay dated October 11, 2017 (the dismissal order). The defendants, plaintiffs by counterclaim, Zachary Gomez, Margot Nelles and Ramon Gomez (the Gomez defendants) also brought a motion for an order setting aside the dismissal order.
- [2] The defendants Nick Danikas, Georgia Danikas and Maria Danikas (the Danikas defendants) opposed the plaintiffs' motion for an order setting aside the dismissal order as against them. The Danikas defendants did not oppose the plaintiff's motion for an order setting aside the dismissal order as against the other parties.
- [3] At the conclusion of the hearing of the motions, I advised the parties of my decision, with reasons to follow. The motions for an order setting aside the dismissal order were granted. Reasons for decision were released on May 10, 2018 (2018 ONSC 2845).
- [4] This endorsement addresses the issue of costs of the motions.

- [5] The plaintiffs and Danikas defendants now consent to an order that the Danikas defendants pay costs to the plaintiffs in the all-inclusive sum of \$3,500.00 within 30 days.
- [6] The Gomez defendants seek their costs payable by the Danikas defendants. The Danikas defendants submit that no costs should be payable to the Gomez defendants.
- [7] Having regard to all of the circumstances of the motion, I am satisfied that it is just and reasonable that the Danikas defendants pay costs of the motion to the Gomez defendants. The Gomez defendants were successful. All four *Reid* factors were satisfied. The trial record had been served prior to the deadline to set the action down for trial. The action would have been set down for trial in accordance with deadline but for an issue that arose with respect to filing of the trial record. One week following the dismissal order, counsel for the Gomez defendants attempted to obtain the consent of the parties to set aside the dismissal order given the circumstances of the dismissal.
- [8] In my view a fair a reasonable amount that the Danikas defendants could expect to pay for costs of the Gomez defendants is the all-inclusive sum of \$5,000.00.
- [9] Order to go as follows:
1. On consent of the plaintiffs and Danikas defendants, costs of the plaintiffs are fixed in the all-inclusive sum of \$3,500.00 payable by the Danikas defendants within 30 days.
 2. Costs of the Gomez defendants are fixed in the all-inclusive sum of \$5,000.00 payable by the Danikas defendants within 30 days.

Master B. McAfee

Date: August 13, 2018