

**CITATION:** The Polish Alliance of Canada v. Polish Association of Toronto Limited, 2016  
ONSC 186  
**COURT FILE NO.:** CV-08-361644  
**DATE:** 20160108

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**BETWEEN:**

THE POLISH ALLIANCE OF CANADA

Plaintiff

**AND:**

POLISH ASSOCIATION OF TORONTO LIMITED, MAREK MIASIK aka MAREK ADAM MIASIK, MARIA MIASIK, JAN ARGYRIS aka LOUIS JOHN ELIE ARGYRIS aka LOUIS aka JOHN ARGYRIS, WLADYSLAW JASLAN aka WLADYSLAW JULIAN JASLAN, HELENA JASLAN, EUGENIUSZ SKIBICKI, CZESLAWA ERICKSEN, STANISLAW ROGOZ aka STAN ROGOZ, ALBERT JOSEPH FLIS and RICHARD RUSEK

Defendants

**AND:**

POLISH ASSOCIATION OF TORONTO LIMITED, MAREK MIASIK aka MAREK ADAM MIASIK, MARIA MIASIK, JAN ARGYRIS aka LOUIS JOHN ELIE ARGYRIS aka LOUIS JOHN ARGYRIS aka JOHN ARGYRIS, WLADYSLAW JASLAN aka WLADYSLAW JULIAN JASLAN, HELENA JASLAN, EUGENIUSZ SKIBICKI, CZESLAWA ERICKSEN, STANISLAW ROGOZ aka STAN ROGOZ, and ALBERT JOSEPH FLIS

Plaintiffs by Counterclaim

**AND:**

THE POLISH ALLIANCE OF CANADA, ROBERT ZAWIERUCHA, TADEUSZ MAZIARZ, ELIZABETH BETOWSKI, DANUTA ZAWIERUCHA, TERESA SZRAMEK, ANDRZEJ SZUBA, ADAM SIKORA, ELZBIETA GAZDA, STANISLAW GIDZINSKI, STANISLAW IWANICKI and TADEUSZ SMIETANA

Defendants by Counterclaim

**BEFORE:** F.L. Myers J.

**COUNSEL:** E. Patrick Shea, for Collins Barrow Toronto Limited, Receiver and Manager  
B.A. Kaminsky, for the Plaintiff  
Bernie Romano, for the Defendants/Respondents, except for Richard Rusek

**READ:** January 8, 2016

F.L. Myers J.

COSTS ENDORSEMENT

[1] By Endorsement dated October 19, 2015, the Court approved the fees and disbursements of the Receiver and allocated the costs of the receivership among the parties 50/50. At para. 18 of that Endorsement, the Court set a schedule for the parties to file written submissions concerning the costs of that motion. The Receiver and the defendants have delivered costs submissions. I have not heard from the plaintiff either with submissions or a request for an extension of the December 31, 2015 scheduled deadline. I can only assume that it has chosen to refrain from participating in this aspect of the proceeding and that it therefore does not oppose the relief sought.

[2] The Receiver submits that while the result of the motion was a 50/50 split of the costs of the receivership generally, the Receiver should be entitled to its costs of the motion principally payable by the plaintiff. The plaintiff opposed the approval of the Receiver's fees but presented no alternative analysis. It did not respond to the Receiver's offer to reduce its fees and disbursements by 15%. Neither did it accept the offer made by the defendants that essentially proposed the 50/50 sharing that was ordered. I consider these offers under Rule 49.13.

[3] The defendants also seek their costs of the motion from the plaintiff on a partial indemnity basis in the amount of \$5,593.50. They claim that all costs should be paid in full by the PAC although, in the alternative, they accept the Receiver's submission that the split of the Receiver's fees and disbursements for the motion be 80/20 as between the plaintiff and the defendants.

[4] The Receiver's fees and disbursements from June 1, 2015 to the date of the motion are \$8,199.85 all-in. Its counsel's fees from May 27, 2015 to the date of the motion are \$23,205 plus unbilled disbursements of \$115.05. The bulk of the Receiver's fees and disbursements are related to the motion although some time was included regarding other elements of the receivership in counsel's bills for this period.

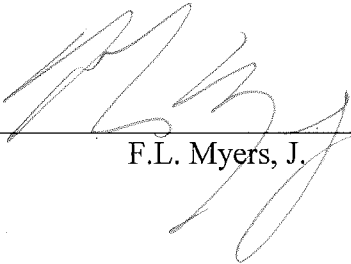
[5] The fixing of costs is a discretionary decision under section 131 of the *Courts of Justice Act*. That discretion is generally to be exercised in accordance with the factors listed in Rule 57.01 of the *Rules of Civil Procedure*. These include the principle of indemnity for the successful party (57.01(1)(0.a)), the expectations of the unsuccessful party (57.01(1)(0.b)), the amount claimed and recovered (57.01(1)(a)), and the complexity of the issues (57.01(1)(c)). Overall, the court is required to consider what is "fair and reasonable" in fixing

costs, and is to do so with a view to balancing compensation of the successful party with the goal of fostering access to justice: *Boucher v Public Accountants Council (Ontario)*, 2004 CanLII 14579 (ON CA), (2004), 71 O.R. (3d) 291, at paras 26, 37.

[6] It seems to me that the result of the motion was obvious. Moreover, it was both delayed and its scope was unnecessarily expanded by the refusal of the plaintiff to consent to the approval of the Receiver's reports for reasons that were extraneous to the proceedings and to the motion (i.e. concerning the election of directors by PATL). While under its appointment order the Receiver is entitled to full indemnity for its reasonable fees and disbursements including those of its counsel, it seems to me that considering the matter from the perspective of the plaintiff, it would not have reasonably understood that it would be exposed to fees of the level sought by the Receiver on this motion. In my view, costs of \$10,000 ought to be paid to the Receiver for the motion to be allocated 80/20 to the plaintiff and the defendants respectively. The rest of the Receiver's fees and disbursements and those of its counsel set out in para. 4 above are approved for the receivership generally and are to be borne by the parties 50/50 pursuant to my prior Endorsement.

[7] I have reviewed Mr. Romano's costs outline and find the fees charged and the hours billed reasonable. In my view, it is fair and reasonable that the plaintiff pay the defendants' costs of the motion on a partial indemnity basis in the amount of \$5,593.50.

[8] Order to go for the payment of the costs ordered above forthwith.

  
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F.L. Myers, J.

Date: January 8, 2016