

2015 ONSC 913  
Ontario Superior Court of Justice

Bedford v. Abushmaies

2015 ONSC 913, 2016 CarswellOnt 21886

**Alexandra Nathalie Bedford, and Natassja Chynna Bedford  
(Plaintiffs) and Abedel Karim Abushmaies (Defendant)**

Belleghem J.

Heard: November 16, 2015; November 17, 2015; November 18, 2015; November 19, 2015

Judgment: February 5, 2016

Docket: CV-10-725-SR

Proceedings: additional reasons to *Bedford v. Abushmaies* (2015), 2015 CarswellOnt 21059, 2015 ONSC 7310, Belleghem J. (Ont. S.C.J.)

Counsel: Mr. David Cameletti, for Applicant  
Mr. Trenton D. Johnson, for Respondent

Subject: Civil Practice and Procedure

**Related Abridgment Classifications**

Civil practice and procedure

XXIV Costs

XXIV.8 Scale and quantum of costs

XXIV.8.a General principles

**Headnote**

Civil practice and procedure --- Costs — Scale and quantum of costs — General principles

Grandmother of child died leaving child as beneficiary of half of estate, with mother to keep amount invested — Office of Children's lawyer required mother to pass accounts, which was not done, and contempt proceedings were commenced — Inter vivos trust was set up with step-father as settlor, and mother as trustee — Despite trust, mother was found in contempt — Order made that property that was subject of family trust, was to stand in place trust which was required to have been set up by mother — Step-father and mother divorced — Step-father acted as de facto trustee, and ordered sale of property — After payments on property were made, remaining amount was paid out to plaintiff's lawyer to be held in trust — Child brought action against step-father for breach of fiduciary duty — Action dismissed — Parties made submissions regarding costs — Defendant entitled to costs in amount of \$20,000 — Counsel was experienced and rates claimed were reasonable — Both counsel were experienced and cooperated extensively — Issues were important to parties but not public, and were not complex — Offer to settle that was made should have been accepted.

**Table of Authorities**

**Rules considered:**

*Rules of Civil Procedure*, R.R.O. 1990, Reg. 194

R. 49 — considered

R. 57.01 — considered

ADDITIONAL REASONS to judgment reported at *Bedford v. Abushmaies* (2015), 2015 ONSC 7310, 2015 CarswellOnt 21059 (Ont. S.C.J.), respecting costs.

***Belleghem J.:***

1 This was a four day trust claim for \$100,000, Realistically, the actual amount in dispute can properly be set in the range of approximately \$50,000 as plaintiff's counsel did not vigorously pursue anything in excess of the amount alleged to have been the subject matter of the trust. Given the position of the defendant that the approximately \$40,000 put in trust after the sale of the property was always available to the plaintiff, and that the punitive damage claim was not vigorously pursued, it may even be argued that the actual amount of dispute at trial was somewhere between \$40,000 and \$60,000 approximately.

2 The above features of this case are important because, as rule 57.01 suggests, the reasonable expectation of parties to a lawsuit with respect to the issue of costs must bear a reasonable relationship to the actual amount in dispute, as demonstrated by how the trial was conducted.

3 Here, the unsuccessful plaintiff does not dispute the defendant's entitlement to costs, but merely the quantum. Under rule 57.01 there are a list of factors I am to take into account in exercising my discretion on the question of costs.

4 Defence counsel is very experienced and no issue is taken with respect to his rates or hours spent. It is however submitted by *plaintiff's counsel* that much of the actual time spent in pre-trial matters by plaintiff's counsel, occurred at a time when the defendant was representing himself. This of course would mean the plaintiff would personally have incurred far larger costs than the defendant did from the inception of the action through to completion. While this does not from a technically legal perspective, disentitle the defendant from the claims he makes for payment to his lawyer, it would be inequitable not to take into account the fact that the defendant had the personal benefit of not having incurred costs during the early stages of the proceedings.

5 The proceeding was not inherently complex. The issues were important to the parties, but not to the public at large.

6 A very significant feature in this case is the fact that once there was very experienced counsel on both sides. They cooperated extensively. They worked to reduce the amount of trial time required, and hence the costs to both sides of the trial proceedings. For this they are both to be equally commended.

7 There were no steps in the proceedings that were inappropriate unless such can be ascribed to the defendant's efforts to have the action moved from Ontario to Michigan. However, in the grand scheme of things, that becomes almost irrelevant.

8 There are very few facts that inform the issue of costs in this case, therefore, other than the reasonable expectation of the parties relative to the actual amount in dispute, to which I have already adverted.

9 The amount claimed for costs is \$35,000, The essential basis for this is rule 49; an offer was made and obviously ought to have been accepted.

10 The position of the plaintiff is, that taking into account the reasonable expectation of the parties, and the actual amount in dispute, that the costs should be fixed in the sum of \$15,000, together with disbursements and HST.

11 At the end of the day, I am satisfied that the appropriate award of costs is \$20,000 together with all of the disbursements and HST claimed, as this will effectively incorporate the concerns raised above.

*Order accordingly.*