

Court File Number: CV-17-11812-00CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

ZANARDO

Applicant

AND

DI BATTISTA et al.

Respondents

Case Management Yes No by Judge:

Counsel	Telephone No:	Email/Facsimile No:
E. Lamek for the Liquidator		Edmond.lamek@dlapiper.com
R. Malen for the Respondents		<u>malen@gsnh.com</u>
M. Sammon for the Applicant		msammon@litigate.com

- Order Direction for Registrar (**No formal order need be taken out**)
 Above action transferred to the Commercial List at Toronto (**No formal order need be taken out**)

COSTS ENDORSEMENT

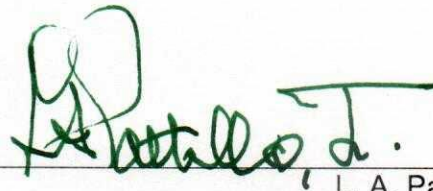
Date Heard: IN WRITING

1. By endorsement dated November 30, 2021, I dismissed the respondent's, Julia Babensky ("Ms. Babensky"), motion to, among other things, remove the Liquidator of the respondent Di Battista Gambin Developments Limited ("DBG") and replace it with a Monitor to oversee the day to day management of DBG by the respondent Ray Di Battista ("Battista").
2. At the conclusion of my reasons, at para. 46 of the endorsement, I stated:

46. The Liquidator filed no Costs Outline which is not surprising given its counsel's costs are part of the liquidation and ultimately paid on a full indemnity basis if approved by the court. In the circumstances of this motion, which I consider to have been without merit, such a result would be unfair in my view, as those costs would ultimately be borne 50% by the Estate [Applicant]. In order to avoid that result, in my view Babensky should pay the Liquidator its full indemnity costs incurred in responding to her motion.

3. Accordingly, I directed the Liquidator to file a Costs Outline and provided for Ms. Babensky to briefly respond and the Liquidator to reply to Ms. Babensky's submissions, if required.
4. The Costs Outline of the Liquidator claims full indemnity costs of \$51,259.63 inclusive of HST.
5. Ms. Babensky takes issue with the hourly rate charged by the Liquidator's counsel together with the time spent in comprising the responding materials, along with some of the statements set out in the Costs Outline about the reasons for the time spent. She further submits full indemnity costs are not a blank check and are subject to the overriding principle of reasonableness.
6. In summary, Ms. Babensky submits the costs claimed should be reduced by \$5,127.50 which results in a total of \$45,465.55 inclusive of HST.
7. The Liquidator's counsels' rates have been consistent and previously approved by the court in various matters related to the liquidation. It is only recently that Ms. Babensky has raised any objection which I consider results from the issues between the Liquidator and her husband, Di Battista. The rates claimed are reasonable for the work done and experience of the lawyers involved.
8. Nor do I consider upon review that counsel spent too much time preparing the Liquidator's responding materials. As the Liquidator points out, some of the materials were necessitated solely as a result of the repeated filing of additional material by Ms. Babensky in the days leading up to the motion.
9. As a result, I also consider the time spent in respect preparation of the responding materials to be reasonable.
10. While I agree with the principle that full indemnity costs do not give rise to a blank cheque and must still be considered through the reasonableness lens, in my view, given the issues on this motion and the Liquidator's required response, the costs claimed, although high, are reasonable.
11. For the above reasons, Ms. Babensky is required to pay the Liquidator's full indemnity costs claimed of \$51,259.63 inclusive of HST.

March 21, 2022



L. A. Pattillo J.