

CITATION: Randhawa v. Randhawa
COURT FILE NO.: CV-18-593636-00CL
DATE: 20210723

SUPERIOR COURT OF JUSTICE – ONTARIO

(Commercial List)

RE: SWINDERPAL SINGH RANDHAWA

Applicant

AND:

RANA PARTAP SINGH RANDHAWA, PROEX LOGISTICS INC.,
GURU LOGISTICS INC., 1542300 ONTARIO INC. (OPERATED AS ASR
TRANSPORTATION), 2221589 ONTARIO INC., 2435963 ONTARIO INC.,
NOOR RANDHAWA CORP., SUPERSTAR TRANSPORT LTD.,
R.S. INTERNATIONAL CARRIERS INC., SUBEET CARRIERS INC.,
SUPERSTAR LOGISTICS INC., CONTINENTAL TRUCK SERVICES INC.,
and ASR TRANSPORTATION INC.

Respondents

BEFORE: Koehnen J.

COUNSEL: *Aaron Kreaden, Sam Dukesz* for the Applicant

Brian Kolenda, Chris Kinnear Hunter for the Respondents

Christina Bowman for Motion Transport Ltd.

HEARD: In writing

COSTS ENDORSEMENT

- [1] This is my costs endorsement arising out of reasons dated May 19, 2021, indexed as *Randhawa v. Randhawa*, 2021 ONSC 3643.
- [2] Paul seeks substantial indemnity costs of \$126,441.48 in respect of this motion. In the alternative, Paul seeks costs of \$107,938.43, representing partial indemnity costs until his offer to settle the motion on December 7, 2020, and substantial indemnity costs thereafter. In the further alternative, Paul seeks partial indemnity costs of \$84,400.98.
- [3] For the reasons set out below, I award Paul his costs on a substantial indemnity scale which I fix at \$126,441.48 payable by Rana and Motion Transport Ltd. on a joint and several basis.
- [4] On December 7, 2020, Paul offered to settle the motion by having a receiver appointed to sell the business and investigate the issues raised in the arbitrator's award. In addition, Paul agreed to assume the costs of that investigation if it did not find any wrongful conduct.
- [5] Paul's Offer was substantially identical to what I ordered. If Rana had accepted the settlement offer, the parties could have avoided the costs incurred on the March attendance in large part.
- [6] Rana submits that the court should defer any decision on costs until the conclusion of the investigation because the overall reasonableness of the motion cannot be determined in isolation from the outcome of the investigation. I am unable to agree with that proposition.
- [7] The arbitrator had appointed an inspector over the trucking business that Paul and Rana operated. The motion before me was, in large part, a challenge to the arbitrator's jurisdiction to do so. Rana failed entirely on that argument. While it might be appropriate

for the arbitrator to find that the costs of the investigation should await the outcome of the investigation, it is not, in my view, appropriate for the court to defer costs on an unmeritorious motion to challenge the arbitrator's jurisdiction to make the order he did.

[8] Rana advances various additional arguments to support the proposition that each party should bear its own costs. Rana submits that he offered to appoint a receiver and have the receiver make documents available to Paul. That offer misses the point. A receiver who preserves documents has no investigatory power. What was required here was investigatory power. That is abundantly clear from the history of the arbitration and from what the arbitrator noted as a consistent pattern on Rana's part of a lack of transparency and failure to provide information.

[9] Shortly before the motion, Rana changed his position and was amenable to an investigatory receivership but not with the receiver Paul wanted. Rana says if Paul had accepted that offer, the hearing would have been unnecessary. I have two difficulties with that proposition. First, by the time Rana made the offer, the bulk of the work on the motion had already been done. Second, I did not accept Rana's choice of receiver/investigator but instead chose Paul's receiver/investigator. As a result, Rana did not obtain a result on the motion that was equal to or superior to his settlement offer.

[10] In my view, costs on a substantial indemnity scale are appropriate. The issue of the inspector arose because the parties had entered into minutes of settlement that required Rana to produce information to Paul. Rana fails to comply with that obligation. He advanced no legitimate reason for failing to comply. The entire investigation and

appointment of an Inspector would have been unnecessary had Rana simply complied with what he had agreed to do.

[11] Rana submits that Paul's costs are excessive. He does not, however, provide a costs outline to demonstrate the costs he incurred. It has often been noted that where one party challenges the other's costs as excessive, but does not provide a breakdown of its own costs, the challenge "is no more than an attack in the air" and the Court may infer that the challenging party devoted as much or more time as the party claiming costs. I draw that inference here and decline to accept the submission that Paul's costs are excessive.

[12] Motion Transport resists a cost order against it. It submits that cost awards against non-parties are granted only where their conduct amounts to an abuse of process or other misconduct that brings the administration of justice into disrepute. While that may be the case in certain circumstances, Motion is a non-party for purposes of this motion in name only. The arbitrator could not order an investigation into the affairs of Motion Transport. As a result, Paul had to apply to the court to do so. Given that relief was sought against Motion Transport, it was effectively a party to the motion.

[13] Motion Transport argues that for it to pay costs now for what might turn out to be an unfounded investigation would only place it "under further financial strain than that which it has already been subject to by this proceeding."

[14] To the extent that Motion Transport has been subject to financial strain by this proceeding, it is the author of its own misfortune. It was clear from the outset that the involvement of Motion Transport in the investigation would be minimal. What was required was access to Motion Transport's records in order to make copies or of image portions of its computer

database. Motion Transport has probably spent more money resisting its inclusion in the investigation than its involvement in the investigation will cost it.

[15] Moreover, I cannot ignore the basis for including Motion Transport in the investigation to begin with. In paragraph 43 of my reasons, I noted:

The Arbitrator made a series of findings surrounding what appeared to be the transfer of at least 12 trucks from the brothers' business to Motion Transport Ltd. It appears that Motion acquired the trucks for the same price at which Rana had sold them, sometimes to a third party, a day or two earlier. Motion was run by a good friend of Rana's, Mr. Dhinda. Mr. Dhinda says he was retired. Rana's son worked for Motion. Mr. Dhinda could not explain where Motion got the money to purchase the trucks that formerly belonged to the brothers' business. Moreover, Mr. Dhinda stated that he had no knowledge of Motion's accounting or operational issues because Rana's son "looked after that."

[16] In those circumstances I am satisfied that that Motion Transport should be jointly and severally liable for the cost award in favour of Paul.



Koehnen J.

Date: July 23, 2021