

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

B E T W E E N:

**KSV KOFMAN INC., IN ITS CAPACITY AS RECEIVER AND MANAGER OF CERTAIN PROPERTY OF SCOLLARD DEVELOPMENT CORPORATION, MEMORY CARE INVESTMENTS (KITCHENER) LTD., MEMORY CARE INVESTMENTS (OAKVILLE) LTD., 1703858 ONTARIO INC., LEGACY LANE INVESTMENTS LTD., TEXTBOOK (525 PRINCESS STREET) INC. AND TEXTBOOK (555 PRINCESS STREET) INC.**

Plaintiff

- and -

**AEOLIAN INVESTMENTS LTD., JOHN DAVIES IN HIS PERSONAL CAPACITY AND IN HIS CAPACITY AS TRUSTEE OF BOTH THE DAVIES ARIZONA TRUST AND THE DAVIES FAMILY TRUST, JUDITH DAVIES IN HER PERSONAL CAPACITY AND IN HER CAPACITY AS TRUSTEE OF THE DAVIES FAMILY TRUST, AND GREGORY HARRIS SOLELY IN HIS CAPACITY AS TRUSTEE OF THE DAVIES FAMILY TRUST**

Defendants

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**COSTS SUBMISSIONS OF THE PLAINTIFF**

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November 1, 2017

**BENNETT JONES LLP**

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Lawyers for the Defendants,  
John Davies, Judith Davies and Aeolian Investments Ltd.

**AND TO:**

**GREGORY HARRIS**  
2355 Skymark Avenue, Suite 300  
Mississauga, ON L4W 4Y6

Defendant

1. The Receiver seeks an order awarding it costs of the motion on a partial indemnity basis in the amount of \$2,319.04, inclusive of HST and disbursements, which is considerably less than the total value of time spent dealing with this matter. All of the fees were necessary and appropriate for the proper preparation of the motion, which contributed to the successful result achieved by the Receiver.

2. The Receiver incurred the following fees in connection with the motion for which it is seeking costs:

<b>Legal Fees</b>					
<b>Fee Item</b>	<b>Lawyer</b>	<b>Hours</b>	<b>Full Rate</b>	<b>Partial Indemnity Rate (60%)</b>	<b>Total Partial Indemnity Costs</b>
Reviewing motion materials; Researching discrete legal issues	J. Blinick	1.5	\$500	\$300	\$450
Preparing for and attending motion	J. Bell	4.0	\$660	\$396	\$1,584
Pre-Tax Total					\$2,034
HST @ 13%					\$264.42
<b>TOTAL FEES</b>					<b>\$2,298.42</b>
<b>Disbursements</b>					
<b>Disbursement Item</b>					<b>Amount</b>
Printing/Copying					\$18.25
Pre-Tax Total					\$18.25
HST @ 13%					\$2.37
<b>TOTAL DISBURSEMENTS</b>					<b>\$20.62</b>
<b>TOTAL FEES AND DISBURSEMENTS</b>					<b>\$2,319.04</b>

3. The Receiver is not seeking its costs for all of the fees incurred by Mr. Bell and Mr. Blinick. The Receiver is also not seeking any costs for the fees incurred by the insolvency lawyer, Sean Zweig. Mr. Zweig's hourly rate is \$680 and he spent approximately 5 hours dealing with the issues on the motion.

4. This court has broad discretion in awarding costs. Successful parties, absent misconduct, are generally entitled to their costs. The court will consider the factors in rule 57.01(1) in exercising its discretion to fix an appropriate award. These factors strongly support the award sought by the Receiver:

- (i) the Receiver was entirely successful on the motion;
- (ii) the matter was of considerable importance to the parties;
- (iii) the defendants listed and purported to sell the house in the face of a Mareva subject to a condition that they obtain court-approval of the sale. The defendants then brought their motion for court-approval on an urgent basis when there was no need to do so. The agreement of purchase and sale was signed on September 30, 2017 (nearly a month before the defendants' served their motion) and the sale is not set to close until January 17, 2018 (over 2 months from now). Although the agreement of purchase and sale contained a conditional deadline of October 24, 2017 to obtain court-approval of the sale, this deadline was self-imposed and, in any event, the motion could have been brought well before the defendants did so; and
- (iv) the costs sought are what, or less than what, the defendants could have reasonably expected to pay if unsuccessful on the motion.

5. The Ontario Court of Appeal has endorsed the 60% rule as an appropriate basis for calculating partial indemnity rates.<sup>1</sup> The rule is widely accepted in Ontario as a reasonable measure of fees.

6. Given all the circumstances, the partial indemnity costs sought by the Receiver are fair and reasonable. Accordingly, the Receiver requests that it be awarded its costs in the all-inclusive amount of \$2,319.04, to be paid by Mr. and Ms. Davies, jointly and severally, within 30 days.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 1<sup>st</sup> day of November, 2017.

  
BENNETT JONES LLP

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<sup>1</sup> *Inter-Leasing, Inc. v. Ontario (Revenue)*, [2014 ONCA 683](#)

**KSV KOFMAN INC. in its capacity as Receiver and Manager of  
Certain Property of Scollard Development Corporation et al.**  
Plaintiff

v.

**JOHN DAVIES et al.**

Defendants

Court File No: CV-17-11822-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT  
TORONTO

**COSTS SUBMISSIONS OF THE PLAINTIFF**

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