

2013 ONSC 5972
Ontario Superior Court of Justice

Ahmed v. Ghuman

2013 CarswellOnt 13542, 2013 ONSC 5972, [2013] W.D.F.L. 5558, 234 A.C.W.S. (3d) 943

**Sania Muneeb Ahmed, Applicant and Muneeb Ahmed Ghuman, Respondent and
Envision Mobile Limited, Third Party**

Czutrin J.

Judgment: September 25, 2013
Docket: FS-11-371125

Proceedings: additional reasons to *Ahmed v. Ghuman* (2013), 2013 CarswellOnt 8523, 2013 ONSC 4244 (Ont. S.C.J.); and additional reasons to *Ahmed v. Ghuman* (2013), 2013 ONSC 4773, 2013 CarswellOnt 9784 (Ont. S.C.J.)

Counsel: James S. Marks, for Applicant
Respondent, for himself
W. Eric Kay, for Non-Party Vizio Mobile Inc. /Envision Mobile Limited

Subject: Family; Civil Practice and Procedure; Property

Headnote

Family law --- Costs — In family law proceedings generally — Factors considered — Miscellaneous

Wife and husband, in domestic proceedings, sought disclosure from each other — Husband's company was third party from which wife also sought disclosure — Disclosure issues were addressed, and wife was substantially successful — Ruling was made regarding costs — Costs awarded — Wife was successful on motion, and was prima facie entitled to costs — There was nothing in costs submissions of either husband or his company that raised issues of bad faith or other reasons why wife should not be entitled to costs — Husband's income and value of his interest in company were critical issues in determining spousal support and equalization — Wife was entitled to challenge expert reports provided by husband, and her expert's requests for disclosure were reasonable — Wife was entitled to costs fixed at \$30,000, of which husband and his company were jointly responsible for, and were payable forthwith.

Table of Authorities

Cases considered by Czutrin J.:

Ahmed v. Ghuman (2013), 2013 CarswellOnt 8523, 2013 ONSC 4244 (Ont. S.C.J.) — referred to

Ahmed v. Ghuman (2013), 2013 ONSC 4773, 2013 CarswellOnt 9784 (Ont. S.C.J.) — referred to

Statutes considered:

Courts of Justice Act, R.S.O. 1990, c. C.43
Generally — referred to

Rules considered:

Family Law Rules, O. Reg. 114/99
R. 24 — referred to

ADDITIONAL REASONS TO judgments reported at *Ahmed v. Ghuman* (2013), 2013 CarswellOnt 8523, 2013 ONSC 4244 (Ont. S.C.J.) and *Ahmed v. Ghuman* (2013), 2013 ONSC 4773, 2013 CarswellOnt 9784 (Ont. S.C.J.) .

Czutrin J.:

1 This endorsement addresses costs arising from my endorsement dated June 21, 2013 [2013 CarswellOnt 8523 (Ont. S.C.J.)], where I ordered the Respondent, Muneeb Ghuman, and the non-party Envision Mobile Ltd., to make the disclosure requested by the Applicant, Sania Ahmed.

2 I also address costs arising from my endorsement of July 16, 2013 [2013 CarswellOnt 9784 (Ont. S.C.J.)]. The July 16, 2013 endorsement arose from the Respondent's motion brought while the disposition disclosure motion was still pending before me. The Respondent's motion sought further disclosure concerning a safety deposit box owned by the Applicant's father and the Respondent's request to sell the matrimonial home.

3 When the parties attended on the motion to deal with the safety deposit box and sale issue, I also addressed the delay by the Respondent and non-party in complying with my disclosure order dated June 21, 2013. I made it clear that while there was some delay and dispute over the formal order to issue, the disclosure should be made ready. "This case has been bogged down in disclosure. The time started for compliance upon my endorsement being released." (On July 21, 2013 I finally signed the formal order arising from the June 21, 2013 endorsement.)

4 To put this case into some limited context, on July 11, 2013 in a handwritten endorsement dealing with costs arising from a February 7, 2013 speak to attendance, I stated:

The simplest issues in this case become protracted and at times require unnecessary appearances

The Respondent's insistence on the way the motion proceeded made the simple complex and I ordered him to pay \$2,500 costs forthwith.

5 Returning to my July 16, 2013 endorsement, in addition to the safety deposit box issue and sale of the matrimonial home issue that I addressed, I ended up dealing with compliance with my previous costs order of \$15,000 that the Respondent sought to revisit (I was satisfied that he had the resources to satisfy the payment), required the Respondent to disclose what he did with the \$50,000 he had received as a result of an earlier motion in November 2011 (he said he gave it to his parents to repay a debt at the time of separation although not previously included in his financial statements filed). While I did allow the sale of the home and ordered the Applicant to obtain further disclosure about the TD safety deposit box, I set conditions on the sale of the home.

6 In considering costs the Respondent has chosen to be without counsel and has increased the Applicant's costs by his approach to this case.

7 The Respondent, in person, and Envision Mobile Ltd. ("Envision") (represented by counsel) vigorously defended the disclosure request.

8 The Applicant was successful on the motion and is *prima facie* entitled to costs and there is nothing in the costs submissions of either Envision or the Respondent that would raise issues of bad faith or other reason why the Applicant should not be entitled to costs. In coming to my costs conclusions, I have considered by discretion under the *Courts of Justice Act*, Rule 24 of the Family Law Rules, proportionality, fairness and reasonableness and the importance of disclosure necessary to determine the Respondent's income and value of his assets at the valuation date. This has been a consistent theme in this case.

9 Costs submissions are not intended to revisit the merits of the motion, as I found there was merit, and ordered the disclosure requested.

10 A critical issue in determining spousal support and equalization that the Applicant appears to be entitled to is the Respondent's income and the value of his interest in Envision.

11 While the Respondent has provided an expert report, the Applicant is entitled to challenge the reports and I have found that the requests for disclosure of the Applicant's expert first made in 2012 are reasonable.

12 Ultimately, assuming the disclosure is made as ordered, a long overdue settlement conference can proceed and, if necessary, a trial.

13 While it may be that the Respondent's representations as to his income and his net family property will be upheld, the disclosure requested should not have been resisted.

14 I have sent this message to the Respondent and Envision by previous endorsements (July 20, 2012 and December 3, 2012).

15 While the Respondent is no longer the sole shareholder of Envision (the non-parties hold approximately 80%) at the date of separation (the valuation date to determine equalization issues) he was the sole shareholder. His obligations for disclosure on the equalization issues, and providing a valuation of his interests, are as of that date. The Respondent is the President, CEO, and Director of the company. The Respondent and Envision took the same position and given his previous shareholdings and continuing role it is not a stretch to conclude that he and the other shareholders continue to have discussions and come to joint decisions. Ultimately, if the case is not settled and a trial proceeds, the trial judge will be in a better position to determine credibility and whose position has merit.

16 The Applicant seeks full indemnity recovery of costs in the amount of \$35,049.75 and the amount is supported by the Applicant's counsel's Bill of Costs. She asks that the Respondent and Envision be jointly and severally be responsible for the costs.

17 In responding to the costs submissions, counsel for Envision relies on fairness and reasonableness and Envision's exposure to inconvenience and expense.

18 Counsel suggest that the Applicant's counsel has "descended into the fray and conducted the proceeding accordingly."

19 An issue appears to be the relationship amongst the lenders/majority shareholders and the Respondent.

20 The other two shareholders/lenders assert concerns about the effects of the matrimonial dispute on the Respondent and his work performance at Envision.

21 Envision submits that there should be either no costs as against Envision or alternatively should not exceed \$4,500.

22 Knowing this issue was outstanding, the Respondent brought another motion and as far as costs of that motion, costs will be in the cause and reserved to the trial judge. I am prepared to fix costs, if the Applicant is successful, at \$7,500 and pending trial or resolution secured against the proceeds of the matrimonial home once sold. As the Respondent is without counsel, the costs submissions he presented are inadequate to fix or determine his costs. He will need to provide to the trial judge reliable evidence consistent with now several cases on costs that may be awarded to in person parties and how to determine those costs.

23 The Respondent submits that as a minority shareholder of Envision he could not provide the additional disclosure requested.

24 He also claims that the information previously provided “was sufficient for valuation purposes.”

25 Much of the Respondent’s submissions are not relevant to the issue of costs of the disclosure motion.

26 I find that the Applicant is entitled to costs fixed at \$30,000 and that the costs are the joint responsibility of Envision and the Respondent and are payable forthwith.

27 No further motions, except by leave, unless there are issues arising from non-disclosure by Envision or the sale of the Respondent’s condo that I ordered.

28 As soon as the Applicant’s expert provides his reports, a timetable is to be set for any further reports on behalf of the Respondent and a settlement conference and if necessary a trial date. If a timetable cannot be agreed upon, a date may be set before me for a conference through the trial coordinator.

Order accordingly.