2017 ONSC 930
Ontario Superior Court of Justice

Orr v. Metropolitan Toronto Condominium Corp. No. 1056

2017 CarswellOnt 2948, 2017 ONSC 930, 277 A.C.W.S. (3d) 457

Kelly-Jean Marie Orr also known as Kelly-Jean Rainville (Plaintiff) and Metropolitan Toronto Condominium Corporation No. 1056, Gowling, Strathy & Henderson, Brookfield Lepage Residential Management Services, a Division of Brookfield Management Services Ltd., Patrick Post, Pamela Cawthorn, Bruce Ward, Larry Boland, Francine Metzger, Michael Kosich and Richard Dorman (Defendants)

D.A. Wilson J.

Heard: November 9, 2016
Judgment: February 7, 2017
Docket: 01-CV-206672CM

Counsel: Geoffrey Adair, Q.C., for Plaintiff
Barry A. Percival, Q.C, Theodore B. Rotenberg, for Defendant, MTCC 1056
Robert J. Clayton, for Defendant, Brookfield Lepage Residential Management Services, a Division of Brookfield Management Services Limited

Subject: Civil Practice and Procedure; Contracts; Corporate and Commercial; Property; Torts

DETERMINATION of whether condominium corporation could claim indemnity from property manager for costs.

***D.A. Wilson J.*:**

1 I presided over the trial of this action for some 43 days, releasing lengthy Reasons for Judgment and a costs decision. The Court of Appeal remitted two issues back to me as trials of issues: (1) the valuation of the damages of the Plaintiff for the loss of the third floor of her condominium; and (2) a determination of whether the condominium corporation can claim indemnity from the property manager for costs paid and owed. These reasons deal with the indemnification issue.

Background

2 To put this matter in some context, a brief summary of relevant facts is required. The Plaintiff, Kelly-Jean Orr, purchased a townhouse condominium in 1998 which she believed was a three-storey unit, but in reality, it was a two-storey unit which had an illegal third floor that had been built into the common element attic space. As a result, she brought an action against the solicitor who handled the purchase ["Gowlings"], the condominium corporation in which her unit was located ["MTCC 1056"], the vendor who sold her the townhouse ["Weldon"] and Brookfield Management Services Ltd. ["Brookfield"], the property manager of the condominium.

3 Pursuant to a Management Agreement with MTCC 1056 ["the Agreement"], Brookfield prepared what was then known as estoppel certificates, the second of which indicated there were no violations of the Declaration of the condominium corporation. The Declaration described the Plaintiff's townhouse as a two-storey unit, which accords with the plans for the unit; however, the third floor that had been constructed constituted a violation of the Declaration, thus the estoppel certificate was not accurate.

4 In my Reasons for Judgment, I dismissed the claims in negligence that had been asserted against MTCC 1056 and Brookfield. I found liability against Gowlings and Weldon, and I assessed damages.

5 The Plaintiff appealed, and in *Orr v. Metropolitan Toronto Condominium Corp. No. 1056*, 2014 ONCA 855, 327 O.A.C. 228 (Ont. C.A.), dated December 2, 2014, the Court of Appeal determined that Brookfield was MTCC 1056's agent for the purpose of completing the estoppel certificate and found that the actions of Brookfield surrounding the execution of the estoppel certificate were not reasonable or prudent, primarily on the basis that Brookfield had failed to make any inquiries into whether or not the Plaintiff's townhouse complied with the Declaration. It determined that Brookfield's actions did not meet the standard of care and therefore Brookfield was found negligent.

6 The Court of Appeal found that MTCC 1056 owed the Plaintiff a duty of care in the preparation of the estoppel certificate and, further, that it breached its duty by making a negligent misstatement concerning the Declaration and specifically, the existence of the third floor which contravened the Declaration. The higher court found that the Plaintiff relied on the estoppel certificate and she suffered harm.

7 The argument that Brookfield was an agent of MTCC 1056 was not advanced at trial. The Court of Appeal made the specific finding that Brookfield was MTCC 1056's agent for the purpose of completing estoppel certificates. In noting that Brookfield failed to make any inquiries to ensure the Declaration was complied with, the Court of Appeal found Brookfield's actions constituted negligence. The dismissal of the Plaintiff's claims against Brookfield was upheld on the basis that the property manager did not owe the Plaintiff a duty of care; rather, it was acting pursuant to its responsibilities as set out in the Agreement with MTCC 1056.

8 The higher court found Gowlings and MTCC 1056 jointly liable to the Plaintiff in damages for the loss of the value of the third floor. It ordered that Brookfield must indemnify MTCC 1056 for the damages the condominium corporation owed the Plaintiff as a result of the negligent estoppel certificate.

9 In supplementary reasons, *Orr v. Metropolitan Toronto Condominium Corp. No. 1056*, 2015 ONCA 407, 62 R.P.R. (5th) 41 (Ont. C.A.), dated June 8, 2015, the Court of Appeal dealt with the issue of costs as a result of the appeal decision. MTCC 1056 was ordered to pay the Plaintiff one half of her trial and appeal costs in the amount of $201,670.81. It was also ordered to pay $63,825.62 to Brookfield for a portion of its trial and appeal costs. The Court of Appeal affirmed the trial costs of MTCC 1056 in the amount of $525,000; it awarded the condominium its costs of the appeal in the amount of $42,490.60, payable by Gowlings.

10 Brookfield was awarded costs of the trial, fixed at $200,000, of which $50,000 was payable by MTCC 1056. It was awarded costs of the appeal of $45,302.49, of which $11,325.62 was payable by the condominium corporation.

11 In the Court of Appeal, MTCC 1056 argued that it was entitled to recover from Brookfield its costs of the trial and of the appeal, and its liability to the Plaintiff for her costs. The higher court directed those issues be determined by me as a trial of an issue.

12 The Court of Appeal, in its supplementary reasons, at para. 28, stated the following:

> MTCC 1056's claim that Brookfield must indemnify it for its cost liability to the appellant [plaintiff] is a contractual claim based on the Management Agreement. The trial judge did not decide this issue since she found that neither MTCC 1056 nor Brookfield were negligent in preparing the estoppel certificate. On appeal, MTCC 1056 was found liable for negligent misrepresentation, but was entitled to indemnification by Brookfield for the resulting damages owed to the appellant. Whether Brookfield's indemnification obligation extends to costs is now a live issue. In my view, this matter should be remitted to the trial judge to be determined as a trial of an issue under s. 134(4)(c) of the *Courts of Justice Act*. This will permit the parties to make full submissions on the scope of Brookfield's liability for costs under the Management Agreement.

13 The Court of Appeal stated that because Brookfield was successful on the appeal, it was entitled to its appeal costs. The court made them payable by the Plaintiff, Gowlings and MTCC 1056. The court added, at para. 32, "Whether MTCC 1056's liability for this amount falls within the scope of any indemnity under the Management Agreement will be determined by the trial judge after the trial of the issue discussed in the preceding section."

14 Counsel attended before me and made oral submissions and filed written argument, which I have considered. The payments at issue before me are the costs orders as set out below:

- costs MTCC 1056 paid to the Plaintiff for trial: $157,500;
- costs MTCC 1056 paid to the Plaintiff for the appeal: $44,170.81;
- the Sanderson Order costs awarded to Brookfield from MTCC 1056 for trial: $52,500;
- the Sanderson Order costs awarded to Brookfield from MTCC 1056 for the appeal: $11,325.62;
- the trial costs each awarded to MTCC 1056, insured and uninsured: $262,500;
- the costs awarded to MTCC 1056 insured for the Plaintiff's appeal: $28,327.07; and
- the costs awarded to MTCC 1056 uninsured for the Plaintiff's appeal: $14,163.53.
- TOTAL: $822,987,03.

Positions of the Parties

MTCC 1056

15 MTCC 1056 submits that the right to indemnification was pleaded in its crossclaim and since the agency arises directly from the Agreement, the correct interpretation of the Agreement is that Brookfield must indemnify MTCC 1056 for the costs it has paid and is entitled to.

16 Counsel submits that there was no finding of independent negligence on behalf of the condominium corporation and the only reason it had to pay damages and costs to the Plaintiff was because it was vicariously liable for the negligence of Brookfield in the preparation of the estoppel certificate, a function it was contracted to do under the Agreement. It is submitted that costs should follow the event and that it was the negligence of Brookfield that resulted in MTCC 1056 having to pay costs, so it ought to be indemnified pursuant to the Agreement. As well, counsel submits that it ought not to have to pay the costs that were awarded to Brookfield on the trial and on the appeal.

Brookfield

17 Brookfield submits that any indemnification must flow from the Agreement and there is nothing in that document that provides for indemnification of the condominium corporation by Brookfield. MTCC 1056 has a statutory duty to provide an estoppel certificate to a prospective purchaser and it cannot download that duty onto Brookfield.

18 Furthermore, the provision in the Agreement that requires MTCC 1056 to provide insurance for Brookfield is clear evidence that it was never intended under the Agreement that Brookfield would be responsible for its own negligence. The Agreement is specific about the tasks that Brookfield was required to do, and if an error were made, the condominium, as the owner, would take responsibility. It is not fair to impose all of the costs on Brookfield given its limited role in the overall scheme of things, as well as at trial.

Analysis

19 The Court of Appeal has tasked me with determining whether Brookfield is responsible pursuant to the Agreement for any portion of MTCC 1056's trial and appeal costs as well as the costs the condominium corporation has paid to the Plaintiff.

20 The Agreement that was produced at trial was unsigned, but it was accepted by the parties as the governing agreement. It was drafted by Brookfield. Brookfield was the exclusive manager of the condominium property. Brookfield agreed it was familiar with the *Condominium Act, 1998*, S.O. 1998, c. 19 and the Declaration. It was to provide "all management services required in connection with the entire undertaking of the Corporation as may be necessary in the performance of its duties".

21 Paragraph (g) of the Agreement deals with the Estoppel Certificates:

> To prepare for execution by the Corporation . . . . Estoppel Certificates in the form prescribed by Regulation pursuant to the Act and to issue and provide Estoppel Certificates together with the statements and information required pursuant to the Act to any person or persons acquiring or proposing to acquire an interest in any unit within the time permitted or the delivery of such certificates, statements and information prescribed in the Act.
>
> The Manager shall be responsible for inspecting the common elements appurtenant to the unit and when the manager has reason to believe that the unit has been altered without permission by the owner or occupant and upon direction of the Board, the Manager shall inspect the unit to determine . . . whether or not the Corporation has any claim for damages against an owner or whether any violation exists prior to issuing the Estoppel Certificate.
>
> The manager is responsible for the accuracy and completeness of all information contained in the Estoppel Certificate, however, the Manager shall not be liable for any information within the knowledge of the Board but not communicated to the Manager and which should be included in the Estoppel Certificate.

22 The paragraph dealing with the indemnification reads as follows:

> The Corporation shall, during the duration of this Agreement, indemnify and save the Manager completely free and harmless from any and all damages or injuries to person or property, or claims, or actions by reason of any cause whatsoever when the manager is carrying out the provisions of this Agreement or acting upon the direction of the Corporation unless they are as a result of the negligence of the Manager of any of its employees.

23 Finally, the Agreement provides that the condominium corporation would take out liability insurance with Brookfield as a named insured, to provide protection "against any claims for which either the Corporation or the Manager might be held liable as a result of their respective obligations".

24 In its Statement of Defence and Crossclaim, MTCC 1056 claims contribution and indemnity for all amounts it is required to pay to the Plaintiff plus costs, which is the usual form of pleading in actions based in negligence. This pleading also states that Brookfield, in its capacity as manager of the property, was bound to ensure the accuracy of the Estoppel Certificate it prepared, and reference is made to the Agreement.

25 Although the Court of Appeal in its supplementary reasons, at para. 28, remitted the trial of the issue of the "scope of Brookfield's liability for costs under the Management Agreement" to me to decide, the Agreement is silent on the issue that must be determined. Paragraph XIII refers to the indemnification of the property manager by the condominium corporation from claims arising from the performance of duties pursuant to the agreement. However, it is the corporation who is seeking indemnification from the property manager and as all counsel concede, there is no provision in the agreement that speaks to this scenario.

26 While the solicitor for Brookfield argues that paragraph XIV, dealing with insurance, indicates that there was an assumption of risk on the part of MTCC 1056 for the actions of the property manager in the performance of its duties, I do not accept that I can interpret that provision as widely as Mr. Clayton suggests. There was no evidence at trial on

what the parties' understanding was concerning the terms of the agreement. I do not find that the fact that the Agreement required MTCC 1056 to secure liability insurance with Brookfield as a named insured along with MTCC 1056 implies that it was never anticipated that the condominium corporation could pursue the property manager for indemnification arising out of its negligence or that it somehow agreed to accept the risk of any negligence on the part of Brookfield.

27 The Agreement does not contain a provision in favour of MTCC 1056 that provides for its indemnification. Mr. Clayton submits that it can be taken from this omission that the condominium corporation never expected to receive indemnification from the property manager. I do not accept this submission and it cannot be dispositive of the issue before me.

28 Further, the Statement of Defence and Crossclaim of Brookfield makes reference to the Agreement and to preparation of the estoppel certificates, but it does not plead the insurance clause or that all of the risks conferred pursuant to the agreement were to be borne by MTCC 1056. The fact that the condominium corporation obtained insurance with Brookfield as a named insured is common practice and not determinative of the issue of indemnity between these parties.

The Agency Relationship

29 The liability that was imposed on MTCC 1056 arises from the negligence of Brookfield in its preparation of the estoppel certificate; the liability did not result from MTCC 1056's own negligence. While numerous claims at trial and on appeal were advanced against the condominium corporation directly, they were not successful. In its Amended Amended Statement of Defence and Crossclaim, MTCC 1056 pleads that it retained Brookfield to manage the condominium, including the provision of estoppel certificates to prospective purchasers. It pleads that it relied on Brookfield to provide accurate certificates. It claims "contribution and indemnity for all amounts they are required to pay to the Plaintiff and its costs of the action".

30 Brookfield has already been ordered to indemnify MTCC 1056 for the *damages* it had to pay to the Plaintiff; the sole issue for my determination is whether Brookfield must also indemnify the condominium corporation for the *costs* it has had to pay to the Plaintiff and that it has been awarded.

31 The courts have made it clear that a right to indemnity does not arise solely from a contract between the parties. In *McFee v. Joss*, [1925] 2 D.L.R. 1059 (Ont. C.A.), at p. 1064, the court stated:

> . . . an implied contract of indemnity arises in favour of a person who, without fault on his part, is exposed to liability and compelled to pay damages on account of the negligence or tortious act of another, provided the parties were not joint tort-feasors . . . This right of indemnity is based upon the principle that everyone is responsible for his own negligence, and if another is, by a judgment of a Court, compelled to pay damages which ought to have been paid by the wrongdoer, such damages may be recovered from the wrongdoer.

32 The Court of Appeal found that Brookfield was negligent in the performance of a duty it had contracted with MTCC 1056 to carry out. That negligence flowed to MTCC 1056 on the basis of agency law. While the court found MTCC 1056 made a negligent misrepresentation, that was not an act of independent negligence; rather it flowed from the negligence of Brookfield in the preparation of the faulty estoppel certificate that the condominium corporation relied on and provided to the Plaintiff.

33 In *Fenn v. Peterborough (City)* (1979), 25 O.R. (2d) 399 (Ont. C.A.), aff'd [1981] 2 S.C.R. 613 (S.C.C.), at p. 444, the court considered the claim the defendant city asserted in a third party claim against its agent:

> The City's claim against the Commission, made in the same third party proceedings, rests on the common law right of a principal who is found vicariously liable to a plaintiff by reason of the negligence of his agent in the performance of his authorized duties to be indemnified by the agent. It is not a right which has been pursued frequently, but its existence is clear. . . . The principal asserting the right must himself have been without fault in the occurrence which caused the damage.

34 According to the Agreement, Brookfield was obligated to ensure the estoppel certificates were completed properly and accurately. It failed to do so and was found to be negligent. MTCC 1056 was deemed to be negligent by the Court of Appeal as a result of the actions of the property manager. Although Brookfield was successful at trial and on appeal, there is nothing in the Agreement that provides for indemnification of Brookfield for its own negligence. As the Court of Appeal noted in *Fenn*, at p. 413, "If one is to be protected against and indemnified for one's own negligence there would have to be an indemnity clause spelling out this obligation on the other party in the clearest terms." While the issue before me is the indemnification of the party who was not negligent, and thus, it is not precisely the same issue as the court considered in *Fenn*, the reasoning of the court in that case is helpful to my analysis of the case before me.

35 It is submitted that Brookfield's role was small and insignificant in the larger picture of the claims made by the Plaintiff when compared to the involvement of other parties, specifically Weldon and the condominium corporation. It is the position of Brookfield that the Plaintiff's claims arose as a result of actions of the other defendants, particularly Weldon, the vendor who was on the Board of Directors of MTCC 1056 and who was aware of the illegality of the third floor of unit 113 when he sold it to the Plaintiff. Counsel argues that there were numerous claims advanced by the Plaintiff against the condominium corporation at trial that had nothing to do with Brookfield and because his client's involvement was minimal, it should not be saddled with paying the large amount of costs that have been awarded.

36 While counsel submits that Brookfield's involvement was limited to the preparation of the estoppel certificates and as a result, it would be unfair to require Brookfield to indemnify MTCC for its trial costs, I do not agree with this submission. Brookfield, as the property manager of the condominium, was involved in other aspects of the Plaintiff's claims for damages at trial. For example, when Ms. Orr started the renovations to her unit and discovered mould and water damage, she dealt with Patrick Post and Pamela Cawthorn, both of whom were employed by Brookfield. At trial, she asserted that Post and Cawthorn were aware of the renovations she was undertaking and they gave her permission to proceed — see paragraph 102 of trial reasons. The timing of the renovations, when the Plaintiff ought to have ceased the work on the unit, and the costs of repairing defects in the Plaintiff's townhouse and in the common elements were all issues at trial. Brookfield was involved in these matters as they unfolded and Brookfield's participation at the trial would have been required in any event.

37 A similar argument was advanced by counsel for Gowlings before me and it was not successful. As I indicated in my costs endorsement, *Orr v. Metropolitan Toronto Condominium Corp. No. 1056*, 2012 ONSC 4919 (Ont. S.C.J.), the history of the action was acrimonious and protracted; the trial was lengthy and hard-fought on all fronts. When counsel for Gowlings submitted that only a small percentage of trial time was spent on issues involving his client and thus, despite a finding of liability, Gowlings ought not to have to pay a significant quantum of costs, I rejected this argument. In my costs endorsement, at paras. 43-44, I stated the following:

> [T]he facts of the case and the claims against the various Defendants are interwoven and difficult to parse out. . . . In my view, it is impossible to separate out the time spent on various issues at trial.

38 Gowlings advanced the same argument on the issue of costs at the Court of Appeal, unsuccessfully. It submitted that although the findings of negligence against Gowlings was upheld on appeal, it ought to be liable for 25 percent of the appellant's costs because of its "'limited'" involvement at trial: the Court of Appeal's supplementary reasons, at para. 42. Lauwers J.A. noted, at para. 42 of that decision, "Variations on both of these arguments were rejected by the trial judge, and I see no reason to depart from her conclusions on these points."

39 However, the reason the Plaintiff was successful against MTCC 1056 on appeal was only because of the finding of negligence the Court of Appeal made against Brookfield as an agent of the condominium corporation, not because MTCC 1056 itself was negligent. Without that finding, the Plaintiff would not have been successful on appeal against MTCC 1056.

40 The trial was protracted for a number of reasons and I agree that Brookfield was not involved in all of the issues that were advanced at trial. The Plaintiff pursued many allegations and remedies at trial against various defendants. However, the Court of Appeal found that the actions of Brookfield were negligent and that had the estoppel certificate contained accurate information, the Plaintiff would not have gone through with the purchase of unit 113. The existence of the third floor and the large size of the townhouse were important considerations for Ms. Orr when she decided to purchase the condominium. The significance of the negligent conduct of Brookfield cannot be minimized; the consequences were far-reaching.

41 Thus, I cannot accept the submission of Brookfield that their negligence was insignificant in the larger scheme of things as they unfolded after January 1998 and that, as such, it would be unfair to require them to indemnify MTCC 1056 for the costs paid out and incurred.

The Law

42 In *Creasy v. Sudbury (Regional Municipality)* (1999), 133 O.A.C. 54 (Ont. C.A.), the Court of Appeal considered the issue of indemnification between two defendants and stated, at para. 45:

> At common law an implied right of indemnity arises where one person who is not at fault is exposed to liability for the tortious acts of another, such as in situations of vicarious liability. Had the trial judge found Sudbury to be vicariously liable for Inco's negligence, by applying the St. John principle, there would be an implied right of indemnity arising at common law that would displace the operation of s. 1 of the *Negligence Act*. [Citations omitted.]

43 The issue of indemnity for a defendant found vicariously liable for the actions of its agent performing duties pursuant to their agency agreement was considered by the court in *Mainland Sawmills Ltd. v. U.S.W., Local 1-3567*, 2007 BCSC 1734, [2007] B.C.J. No. 2570 (B.C. S.C.). In that case, at para. 22, the court stated the following:

> These authorities support the proposition that an employer or a principal whose responsibility to pay damages is founded only on vicarious liability has a right to be indemnified for the amount of damages where the loss was caused by the negligence or tortious act of an employee or agent acting within the scope of his or her employment or authority. The principle is based on the wrongdoer being responsible for his or her own negligence or tortious act.

44 The court in *Mainland Sawmills* went on to find that the principal was entitled to be indemnified for amounts paid to the Plaintiff in damages as well as costs. In the case before me, the negligence of the condominium corporation flows from the negligence of its agent, Brookfield, in the manner in which it completed the estoppel certificates. The Court of Appeal did not find MTCC 1056 directly liable to the Plaintiff in negligence.

45 In my view, there are two reasons that Brookfield must indemnify MTCC 1056 for the costs it incurred and also for those that it has had to pay to the Plaintiff. First, the Court of Appeal found that Brookfield was the agent of the condominium corporation and in that capacity, it was negligent in the completion of the estoppel certificates. A principal who is not negligent by reason of its own actions but who is liable to another party in negligence as a result of the actions of its agent can claim indemnification from the agent: *Fenn*.

46 Second, the crossclaim advanced by MTCC 1056 claims indemnity for any amounts it is found to be owing. In my view, that includes not only payment of damages, but also payment of costs. This case is one in which the quantum of costs exceeded the amount of damages awarded, so it would be unfair in these circumstances for a party who was found to be negligent by virtue of the actions of its agent, not to be able to claim indemnification for the costs from the negligent agent. To accept the argument of Brookfield would be to render the crossclaim by MTCC 1056 against its property manager of little effect.

47 In my view, to allow Brookfield to escape responsibility for payment of costs arising as a result of their negligence would give rise to an unfair result. It would protect Brookfield from the consequences of its own negligence, and that is not a desirable outcome.

48 Payments made pursuant to findings of negligence made by the court may be damages or costs. While the general rule is that a successful party is awarded costs, there are reasons to depart from that usual outcome, and this is one of those cases. As a successful party, Brookfield has been awarded costs from the Plaintiff and from the co-defendant Gowlings. It would be unfair to require MTCC 1056 to pay Brookfield a share of costs, given the agency relationship between them and the negligence in the performance of the Agreement by Brookfield, as found by the Court of Appeal.

49 There are three sets of costs that MTCC 1056 requests indemnification for: costs payable to the Plaintiff for trial and appeal; costs ordered paid to Brookfield by MTCC 1056; and the costs awarded to MTCC 1056 for the trial and appeal.

50 Brookfield must indemnify MTCC 1056 for the costs of the trial and appeal that are payable to the Plaintiff; that award was made as a result of the negligence of Brookfield in the execution of its duties under the Agreement. Similarly, it would be unfair to require MTCC 1056 to pay to Brookfield a portion of its costs, as a successful party.

51 I fixed the trial costs of MTCC 1056 in the sum of $525,000 and that sum was not disturbed on appeal. The condominium corporation claims that sum from Brookfield. In its crossclaim against Brookfield, MTCC 1056 claimed its costs of defending the action. But for the negligence of Brookfield, the condominium corporation would have been successful on appeal and would have received an award of its costs of the trial. Thus, MTCC 1056 is entitled to receive payment from Brookfield for its costs of the trial.

Conclusion

52 MTCC 1056 is entitled to indemnification from Brookfield for the costs it was ordered to pay to the Plaintiff in the amount of $201,670.81.

53 MTCC 1056 is not required to pay the trial and appeal costs of Brookfield in the amount of $63,825.62.

54 Brookfield shall pay to MTCC 1056 its costs of the trial fixed in the amount of $525,000, to be paid in equal amounts to the insured and uninsured interests.

55 MTCC 1056 is entitled to indemnification from Brookfield for the appeal costs it was ordered to pay to the Plaintiff in the amount of $44,170.81.

56 MTCC 1056 was successful on the trial of the indemnification issue. As such it is entitled to its costs from Brookfield, which I fix in the sum of $25,000 to be paid - $15,000 to Mr. Percival and $10,000 to Mr. Rotenberg.

Order accordingly.

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