

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

CANADIAN WESTERN BANK

Applicant

and

2722959 ONTARIO LTD. and 2156775 ONTARIO LIMITED

Respondents

**REPLY TO THE COST SUBMISSIONS
SUBMITTED BY THE CITY OF MISSISSAUGA**

September 19, 2023

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TO: Service List

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THE CITY OF MISSISSAUGA**

1. The City states that 215 and 272 are judgment proof and that the two corporations have intermingled their debts. They further state that D'Angelo is personally funding the moving parties' litigation. It is submitted that the Canadian Western Bank partially funded \$600,000.00 of a loan agreement in excess of \$5,000,000.00. 215 and 272 had substantial contracts. I refer this court to paragraph 17 of the decision in *Cornerstone Properties Inc. v. Southside Construction Management Limited*, 2020 ONCA 380 (CanLII) in which the Court of Appeal stated:

[17] In his supplementary submissions, counsel for the appellant gets to the real point of his submissions. He argues, that if a party has no funds to satisfy a costs order, and that party is a corporation controlled in the litigation by another corporation that does have funds, fairness and the purposes underlying costs orders dictate that the successful party should receive its costs from the directing corporate entity that has assets. This argument was rejected in *Laval Tool: Laval Tool*, paras. 63, 77, and runs directly against s. 15 of the Business Corporations Act, R.S.O. 1990, c. B.16. Counsel's submissions, if accepted, would fundamentally change the accepted notions of corporate identity insofar as costs awards are concerned. It is an argument best addressed to the legislature.

2. It is submitted that the claim against the City is not an abuse of process and that D'Angelo did not put forward 215 or 272 as a "person of straw" as submitted by the City in paragraph 8 of the City's submissions.

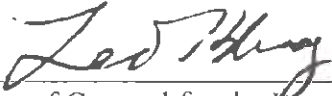
3. In paragraph 14 of the City's submissions, it asks for a direction that any costs order be entered into court file number CV-3036. This is the second action by 215. It is submitted that we are not litigating the issues in the three actions that have been commenced. No costs order has been made in those actions against 215 and 272. The City would like a costs order in its favour against 215 and would move to have those proceedings dismissed if the costs order was not paid. The court should not make such an order as requested by the City.

QUANTUM OF COSTS

4. We have reviewed the quantum of costs in the amount of 18.3 hours in drafting a Factum is excessive. I would submit no more than 10 hours. If a costs order is made against 215 or 272, it should be in the amount of \$6,500.00 all inclusive.

Dated: September 19, 2023

ALL OF WHICH IS RESPECTFULLY SUBMITTED



Leo Klug, of Counsel for the Respondents
(Moving Parties)

CANADIAN WESTERN BANK - and - 2722959 ONTARIO LTD. et al

Court File No. CV-22-00684100-00CL

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Proceedings commenced at Toronto

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SUBMITTED BY THE CITY OF MISSISSAUGA**

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