

CANADA / JUDGMENT

Macpherson v. Wyszatko Estate

2025 ONCA 690

COURT

Court of Appeal for Ontario

DECIDED

8 October 2025

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Macpherson v. Wyszatko Estate Collection Decisions of the Court of Appeal Date 2025-10-08
Neutral citation 2025 ONCA 690 Docket numbers COA-23-CV-0878 Judges Copeland, Jill M.;
Wilson, Darla A.; Rahman, Moiz Subject Civil Decision Content COURT OF APPEAL FOR
ONTARIO CITATION: Macpherson v. Wyszatko Estate, 2025 ONCA 690 DATE: 20251008 DOCKET:
COA-23-CV-878 Copeland, Wilson and Rahman JJ.A. BETWEEN Julia Macpherson Applicant
(Respondent) and The Estate of Nadia Wyszatko, deceased, Richard Wyszatko*, Irene Winter,
Albert's Marina, Sail'er Inn Marine*, Marsh Canada Ltd and Claimspro Respondents (Appellants*)
S. Steven Sands, for the appellants David A.S. Mills and Adnan Subzwari, for the respondent
Heard: June 27, 2025 On appeal from the judgment of Justice Suzan E. Fraser of the Superior
Court of Justice, dated June 30, 2023. COSTS: REASONS FOR DECISION

- [1] The appellants, Richard Wyszatko, and Sail'er Inn Marine appealed the decision of the application judge dealing with the estate of Nadia Wyszatko. In reasons released August 5, 2025, we dismissed the appeal and indicated that if the parties could not agree on costs, we would fix them after receiving written submissions.
- [2] The appellants submit that no costs should be ordered to either party but if a costs order is made it should not exceed \$5,000 all inclusive. They argue that while the appeal was dismissed, this court varied the order of the application judge to remove Richard's liability for the loan, interest, and legal fees. Further, the appeal was reasonable and important to the parties.
- [3] The respondent takes the position that there were numerous grounds of appeal advanced unsuccessfully and there was only a minor correction in the order of the application judge. Consequently, the respondent was successful, and costs should follow the event. She submits that costs in the sum of \$30,000 all inclusive should be ordered payable by the appellants and Irene Winter.

- [4] We agree that the respondent was successful on the appeal and is entitled to her costs. It is unclear on what basis the respondent requests costs of \$30,000 when the partial indemnity costs total \$22,057.17 and the substantial indemnity costs amount to \$32,962.29. In our view, substantial indemnity costs are not warranted, and the appropriate scale of costs is on a partial indemnity scale. The respondent is entitled to her costs of the appeal fixed in the all-inclusive sum of \$22,057.17, an amount that is fair and reasonable in the circumstances.
- [5] We find that Irene Winter is not liable for costs. Irene was not a party to this appeal, and we disagree with respondent's position that Richard effectively ran the litigation and raised grounds of appeal on her behalf. Irene was not a "person of straw". She therefore does not meet the criteria for this court's statutory jurisdiction to order a non-party liable for costs: 11318847 Ontario Ltd. v. Laval Tool & Mould Ltd., 2017 ONCA 184, 134 O.R. (3d) 641, at paras. 59-60.
- [6] The costs are payable by Richard Wyszatko and Sail'er Inn Marine jointly and severally to the respondent. "J. Copeland J.A." "D.A. Wilson J.A." "M. Rahman J.A."

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