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**SUPERIOR COURT OF  
 JUSTICE**

**JUDGES' CHAMBERS**

**ATTENTION**

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**Fax**

**To:** Sonja Hodis **From:** The Hon. Madam Justice S.E. Healey

**Fax:** (705) 737-4403 **Date:** September 1, 2010

**To:** Mark H. Arnold (Gardiner Miller Arnold)

**Fax:** (416) 363-8451

**Pages:** 5

**Re:** Nipissing Condo Corp. v. Simard et al - **CC:**

Court file #09-0198

**Operator:** Hilda Wilson, Judges' Secretary

**Urgent**  **Original to Follow**

**•Comments:**

Copy of Madam Justice Healey's endorsement re costs is attached.

April 20, 2010

OTG as per Draft Judgment signed  
Application against Kyle Gibson is  
discontinued. Matter of costs against  
Reep Simard, Lacrosse, Preston, Fortier,  
Hiles and Neilson Adj to June 15, 2010.

James Jones

June 15/10

This is the second time that  
matter has been before the  
court. As counsel for neither  
to say because of the length of the  
lit. as to the firm priority of  
its return on Aug 31/10 @ 4:30 pm.

[Signature]

September 1, 2010  
~~September 31/10~~

S. Hodis for A.  
M. Arnold for R. Simard

This application started on Apr. 20/10. Having only the return of costs.

SUPERIOR COURT OF JUSTICE

Proceeding commenced at

Barrie  
FILED  
AT BARRIE  
MAR 11 2010  
SUPERIOR COURT OF JUSTICE  
COUR SUPÉRIEURE DE JUSTICE

APPLICATION RECORD

SONJA HODIS  
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62 Camelot Square  
Barrie, Ontario  
L4M 0C2

(LSUC # 43285T)

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Solicitor for the Applicants

The sumer Sumal was put on notice of the non-compliance in July 2008 and it was not until Feb/09 that the application was issued. The R's counsel submitted that it settled as a result of a Court of Appeal ruling in a related case.

Despite several technical arguments advanced by the R's counsel I can find no reason why the A should be limited to receiving only the \$6,000 in costs awarded by Howden J. following an interim motion. The A was faultless and was simply seeking compliance with the Declaration. The outcome of this application was entirely in the A's favour. The costs sought are entirely related to the efforts made by the A in obtaining what is clearly a compliance order pursuant to s. 134 of the Indominum Act, 1998, S.O. 1998, c.19, along with costs incurred following the settlement that relate to taking out the Judgment and attempting to settle costs. There is no reason why

(3)

I should be governed by anything other than the Court's discretion concerning costs as set out in the Court of Justice Act and R. 57 of the Rules of Court Procedure. I should do not need to concern myself with what "additional actual costs" may be charged by the A pursuant to s. 134(5) of the Act, which the Court of Appeal in *Metropolitan Toronto Indominion Corp No 1385 v Skyline Executive Properties Inc 2005 Consol. Ct. 1576* has clearly defined as those legal costs properly incurred to obtain the order beyond the amounts awarded for costs by this Court.

The R's counsel argued for proportionality, which is a difficult argument given that no monetary award of damages was imposed, but rather declarations to seek compliance. The R's counsel took a "rights-based" position, and now must identify others who incurred legal fees as a result of his position.

The A is entitled to substantial indemnity costs. In reviewing the Bill of Costs of the A (quite properly submitted following a judgment rather than a costs motion), I see nothing excessive in the billing or disbursements given the number of R's involved, the amount of time involved, the result and the importance to the A. I accept the submissions of counsel for the A that none of the legal or expenses entered in the Bill of Costs were incurred in the matter before Heenan, J. or the R's appeal of that Order. (cont)

(4)

Costs of the application and the  
appearance to argue costs are awarded  
to the A in the sum of \$34,913 -  
to be paid jointly & severally by the  
R's Swindell, Levesque, Pustoni, Fortun  
Miles, and Neilson. (which costs include  
the \$6,000 awarded by Heenan, J.)

S. Heenan, J.