

**CITATION:** Park v. 1782215 Ontario Limited, 2021 ONSC 6515  
**COURT FILE NO.:** CV-21-608  
**DATE:** 20211001

**SUPERIOR COURT OF JUSTICE – ONTARIO**

**DIVISIONAL COURT**

**RE:** Kate Park, In Lae Park, Young-Ho Park, Applicants

**AND:**

1782215 Ontario Limited, Respondent

**BEFORE:** The Honourable Madam Justice M.E. Vallee

**COUNSEL:** Ryan Wozniak, Counsel for the Applicants

Douglas Spiller, Counsel for the Respondent

**HEARD:** September 21, 2021

**REASONS FOR DECISION**

**On review of the order of Deputy Judge J. Zwicker of the Superior Court of Justice,  
Small Claims Court, dated April 8, 2021**

- [1] The applicants, defendants in Small Claims Court action SC-19-1859-00, bring this application for judicial review of the costs decision made by Deputy Judge Jack Zwicker dated April 8, 2021. In that action, the defendants wished to serve and file a defendants' claim. They had to bring a motion for leave because the deadline had passed. The parties had already attended a settlement conference. The plaintiff raised discoverability issues; however, the self-represented defendants were successful on the motion. The Deputy Judge ordered the successful defendants to pay the plaintiff \$1,500 for costs. This was 15 times the amount allowable in r. 15.07. The Deputy Judge failed to provide any reasons for the high costs award against the successful party.
- [2] Due to technical problems, the motion proceeded by way of conference call moderated by the plaintiff's paralegal because the court's moderator was not working. Unfortunately, there is no record of the proceedings. The applicants state that they were not permitted to make submissions on costs because they were cut off from the conference call. The respondent contests this.

***Issues***

- [3] Did the Deputy Judge's failure to provide reasons for the costs award violate the principles of natural justice and procedural fairness?

[4] If so, should the order be quashed or remitted back to the Deputy Judge to provide reasons?

***Applicable Law***

[5] Rule 15.07 of the *Rules of the Small Claims Court*, O. Reg. 78/06, s. 32 states, “The costs of a motion, exclusive of disbursements, shall not exceed \$100 unless the court orders otherwise because there are special circumstances.”

[6] Rule 57.01(2) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg 194 states that the court may award costs against a successful party.

[7] A failure to provide reasons where they are required is a breach of procedural fairness and is an error in law. See *Newfoundland and Labrador Nurses’ Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, para 22.

[8] The general rule is that the court will not disturb a costs award if the record discloses a proper basis for the judge’s exercise of discretion. See *Abdosh v. American Airlines Inc.*, 2016 ONSC 2121 (Div.Ct.) para 16.

[9] The applicant relies on the following:

- a. Decisions made in the exercise of discretion, such as an order for costs, are entitled to deference, provided that the discretion is exercised judicially and in accordance with principles of fairness and natural justice. See *Kalin v. Ontario College of Teachers*, 2005 CanLII 18286 (ON SCDC) para 30.
- b. Generally, the court is reluctant to interfere with a decision of a Small Claims Court judge on judicial review unless the order was made without jurisdiction or in breach of the principles of natural justice. See *Pardar v. McKoy*, 2011 ONSC 2549 (Div.Ct.) para 3.
- c. A failure to provide reasons constitutes a breach of the principles of natural justice. “Without proper reasons, the parties are left wondering whether their claims have been heard, understood and adjudicated upon in accordance with the legal principles applicable in the circumstances of the case.” See *R. v. Aiken*, 2021 ONCA 298 para 41.
- d. Where there has been a breach of natural justice or procedural unfairness, it is not necessary to engage in an analysis of the appropriate standard of review. Decisions which do not comply with the rules of procedural fairness and natural justice cannot stand. See *Kalin* para 9.
- e. Even though the dispute is over a modest amount of money, “...each case must be given the attention it requires however small it may appear to be. The law is replete with examples of apparently inconsequential disputes which led to major changes or developments in the law...” See *Villardell v. Dunham*, 2012 BCSC 748 (CanLII) para 346.

- [10] The respondent relies on the following:
- a. The court will not exercise its judicial review jurisdiction where the judicial review application is in essence, an appeal by a different name. See *Mazinani v. Clark*, 2014 ONSC 7100 para 10.
  - b. Judicial review is the rare exception, not the rule, and will only be permitted in rare cases where the potential risk of repeating proceedings after review outweighs the prejudice to the general orderly processing of administrative proceeding without interruption until their conclusion. See *Lourenco v. Hegedus*, 2017 ONSC 3872 para 6

### ***The Respondent's Position***

- [11] The respondent/plaintiff states that it argued it would suffer additional costs and prejudice related to a second conference if the motion was granted and requested \$2,500 in costs in this event. The respondent/plaintiff stated that if the applicants/defendants waived the second conference, the respondent/plaintiff would be entitled to costs of \$1,500. The Deputy Judge asked the applicants/defendants if they would agree to waive the second conference. They did.
- [12] The respondent/plaintiff states that the applicants/defendants pointed out that the maximum costs allowable for a motion was \$100, stated they could not afford more than that and a larger amount would be unfair. The Deputy Judge began to give his oral ruling; however, the phone line cut off. He provided his written order the same day by email.
- [13] The respondent states that the Deputy Judge's decision on costs was fair and balanced. No credible evidence was put forward of any breach of natural justice or procedural fairness to warrant quashing the order. The application is essentially an appeal so it must fail.

### ***Analysis***

- [14] I cannot determine whether the applicants/defendants were denied the opportunity to make submissions on costs. The evidence is conflicting. There is no record. In any event, determination of this issue is not necessary.
- [15] This is not an appeal by another name. The applicants do not specifically state that the amount of costs ordered is wrong. They state that it is a high amount; and they do not know why it was ordered because no reasons were given. They say they are entitled to know.
- [16] The Deputy Judge's entire decision is very brief. Regarding costs, it only states, "The Defendants shall pay the Plaintiff's costs of this Motion fixed in the sum of \$1500.00 by no later than April 29, 2021 by certified cheque or e- transfer." As noted above, the general rule is that the court will not disturb a costs award if the record discloses a proper basis for the judge's exercise of discretion. Here, the brief decision does not disclose a proper basis.

[17] The respondent/plaintiff had to prepare responding materials and attend on the motion. It would have to file a response to the applicants/defendants new claim; however, one wonders how this would result in entitlement to costs of \$1,500. Are these special circumstances justifying an elevated costs award that is 15 times higher than the allowable amount set out in r. 15.07? Perhaps they are; however, it is impossible to determine because the Deputy Judge gave no reasons. The existence of special circumstances cannot be gleaned from the body of the decision.


[18] Here, the potential risk of repeating proceedings after review does not outweigh the prejudice to the general order of proceeding with the matter without interruption until its conclusion. No litigation steps will be repeated if the Deputy Judge is required to reconsider costs of the motion and give reasons. The action can proceed independently of this.

***Conclusion***

[19] In this matter, the record does not establish a proper basis for the Deputy Judge to exercise his discretion to make the elevated cost award. Some reasons setting out special circumstances should have been provided to explain the costs award that was 15 times the amount stated in r. 15.07. The Deputy Judge's costs decision is set aside. This matter is remitted back to the Deputy Judge for reconsideration of costs and provision of reasons.

***Costs***

[20] If the parties cannot agree on costs of this application, I will receive written submissions, limited to three pages using 1.5 line spacing, together with a costs outline and any relevant offers. The applicant shall serve and file submissions within 15 days of the release date of this decision. The respondent shall serve and file submissions within a further 10 days. Time spent and disbursements shall be itemized. If no submissions are received within this timeline, the issue of costs shall be considered resolved.

  
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VALLEE J.

**Date:** October 1, 2021