

**CITATION:** Park v. 1782215 Ontario Limited  
**COURT FILE NO.:** CV-21-608  
**DATE:** 20211104

**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:** By written submissions

**COSTS ENDORSEMENT**

- [1] This was an application for judicial review of a Small Claims Court costs decision on a motion. For substantive relief, the applicants requested a declaration and two orders or, in the alternative, “an order remanding the matter back to the Barrie Small Claims Court to render a decision in respect of the matter of costs based on proper legal principles”. The applicants were successful in obtaining an order remanding the matter back to the Small Claims Court.
- [2] The respondent states that success was divided because the applicants were not successful in one of their requests for costs. Under the alternative relief, the applicants requested “an order, in any event of the cause, that no costs be awarded against the Applicants”. Assuming that the applicants use “of the cause” to mean the Small Claims Court action, this court does not have jurisdiction to make that order. The issue of costs in the cause is within the jurisdiction of the Small Claims Court trial judge. The fact that this relief could not be granted to the applicants does not mean that success was divided. The applicants were successful on the alternative substantive relief that they requested.
- [3] Applicants’ counsel acted *pro bono*. According to *1415778 Ontario Inc. v. 1122077 Ontario Ltd.* 2006 Can LII 358 (ON CA), successful *pro bono* parties are entitled to costs for two reasons: so that both parties know that they are not free to abuse the legal system; and, to promote access to justice by enabling and encouraging more lawyers to work *pro bono* for clients with deserving cases.

- [4] The respondent states that no costs should be awarded because the applicants failed to prove a breach of procedural fairness. I do not accept that argument. As stated in my Reasons for Decision, a failure to provide reasons when they are required is, in and of itself, a breach of procedural fairness.
- [5] The applicants rely on two decisions of the Divisional Court, *Pardar v. McCoy*, 2011 ONSC 2549 (CanLII) and *Mazinani v. Clark*, 2014 ONSC 7100 (CanLII) as authority for their submission that costs of \$5,000 will generally be awarded to the successful party on an application for judicial review of a Small Claims Court order.
- [6] The applicants state that they are entitled to more than \$5,000 because they made an offer to settle. The result was better than the terms of the offer. Therefore, they are entitled to partial indemnity costs of \$5,080.09 and substantial indemnity costs from the date of the offer in the amount of \$7,464.85.
- [7] I disagree that the result was better than the terms of the offer. The first term of the offer stated, “Weaver [the respondent] will waive its entitlement to costs pursuant to the Endorsement of Deputy Judge Zwicker, dated April 8, 2021, with the result that the Applicants are required to pay no costs in respect of their motion for leave to file a Defendant’s Claim.” The result of the application was that the Deputy Judge’s costs decision was set aside and the matter was remitted back to him for reconsideration of costs and provision of reasons. The result did not absolve the applicants from paying costs. Rather, the appropriate amount of costs remained within the discretion of the Deputy Judge after reconsideration.
- [8] This application did have merit. Rule 15.07 states that the costs of a motion in Small Claims Court shall not exceed \$100 unless the court orders otherwise because there are special circumstances. The Deputy Judge awarded costs on a motion of \$1,500, a very high amount given the rule, but aside from stating that he was exercising his discretion, he did not provide any reasons setting out the special circumstances that justified the amount. Because the costs amount ordered was very high, reasons were required.
- [9] The amount of costs on this application is determined by balancing all of the factors set out in r. 57.01(1) of the *Rules of Civil Procedure* and by taking into account the principles set out in *Boucher v. Public Accountants* 71 O.R. (3d) 291. Procedural fairness is central to the justice system. A breach is a very important matter. In addition, proportionality and reasonableness must be taken into account, considering that the issue was the failure to provide reasons for a \$1,500 costs order on a Small Claims Court motion. In my view, a fair, reasonable and proportionate costs award for this application is \$5,000 all inclusive, which the respondent shall pay to the applicants within 30 days.

  
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VALLEE J.

**Date:** November 4, 2021