

CITATION: Stewart v. Toronto Standard Condominium Corporation No. 1591, 2014 ONSC 795

DIVISIONAL COURT FILE NO.: 353/12

DATE: 20140203

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

LEDERMAN, SACHS AND NORDHEIMER JJ.

BETWEEN:

IAN G. STEWART

Applicant

– and –

TORONTO STANDARD
CONDOMINIUM CORPORATION NO.
1591

Respondent

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) *Michael A. Spears*, for the Applicant
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) *Bradley Chaplick*, for the Respondent
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) HEARD at Toronto: February 3, 2014

NORDHEIMER J. (ORALLY)

[1] Mr. Stewart seeks judicial review of the decision of a deputy judge of the Small Claims Court who, in dismissing Mr. Stewart’s claim, ordered him to pay \$2,000 in costs.

[2] While there is an issue raised as to this court’s jurisdiction to hear an application for judicial review in these circumstances, we are satisfied that we have that jurisdiction for the reasons set out in *1147335 Ontario Inc. v. Thyssen Krupp Elevator*, 2012 ONSC 4139 (and cases

referred to therein). This jurisdiction is, however, a “limited and narrow” one that will generally arise only in exceptional circumstances such as bias, a breach of the principles of natural justice or an excess of jurisdiction.

[3] The applicant asserts that the deputy judge’s conduct of the proceeding gave rise to a reasonable apprehension of bias on her part. While some of the behaviour of the deputy judge is of a nature that is not recommended, notably the ex parte exchange with the respondent’s counsel and the comments about the applicant’s motives, other observations, such as questioning whether the amount in issue warranted a trial, were entirely appropriate for the deputy judge to make. Regardless, the conduct of the deputy judge, whether viewed individually or collectively, does not rise to the level required to find a reasonable apprehension of bias, namely, whether a reasonably informed bystander could reasonably perceive bias on the part of the deputy judge.

[4] Nor is there a basis to conclude that there was any breach of natural justice or breach of procedural fairness. Evidentiary rulings, whether right or wrong, do not constitute such a breach. Similarly there is no apparent unfairness in not acceding to an adjournment especially where the matter is not pressed by counsel and a review of the transcript does not reveal any prejudice arising from the refusal.

[5] There is therefore no basis for this court, on an application for judicial review, to interfere with the conclusions reached by the deputy judge on the central issue regarding what constitutes a record under s. 55 of the *Condominium Act, 1998*, S.O. 1998, c. 19.

[6] The issue remains whether the deputy judge acted within her jurisdiction to make an award of costs of \$1,500 plus disbursements of \$500 against the applicant. Section 29 of the *Courts of Justice Act*, R.S.O. 1990, c. C.34 limits an award of costs, other than disbursements, in a Small Claims Court matter to 15% of the amount claimed “unless the court considers it necessary in the interests of justice to penalize a party or a party’s representative for unreasonable behaviour in the proceeding”. Rule 19.06 of the Small Claims Court rules provides that “if a party has unduly complicated or prolonged an action or has otherwise acted unreasonably”, the court may order an amount as compensation for that conduct.

[7] In my view, rule 19.06, when it refers to “otherwise acting unreasonably”, must be interpreted as referring to the conduct of a party within the proceeding. The rule is not intended to give the Small Claims Court a broad and unfettered discretion to make awards of compensation regarding the conduct of a party that is unrelated to the matter over which the Small Claims Court has jurisdiction. This interpretation is also consistent with the wording of s. 29 of the *Courts of Justice Act*, to which all of the Small Claims Court rules are subject, that makes it clear that the conduct to be considered when assessing a penalty is conduct in the proceeding.

[8] In my view, the deputy judge erred in penalizing the applicant in costs for conduct that related to his dealings with his condominium corporation and not with respect to how he conducted himself within the proceeding that was before her. In the proceeding, the applicant sought a ruling regarding his access to documents that was an entirely reasonable one to seek. The applicant lost that issue and is required to pay costs as a consequence. That fact does not,

however, give the deputy judge jurisdiction to penalize the applicant because the deputy judge took a negative view of the applicant's conduct towards his condominium corporation.

[9] The application is therefore allowed and the award of costs is reduced to \$150 under the provisions of rule 14.07 (given the unaccepted offer to settle) plus the disbursements of \$500.

LEDERMAN J.

COSTS

[10] I have endorsed the Application Record to read, "This application is allowed in part for reasons delivered by Nordheimer J. The award of costs before the Small Claims Court is reduced to \$150 plus disbursements. As success was divided on this application, there will be no costs."

NORDHEIMER J.

LEDERMAN J.

SACHS J.

Date of Reasons for Judgment: February 3, 2014

Date of Release: February 5, 2014

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ORAL REASONS FOR JUDGMENT

NORDHEIMER J.

Date of Reasons for Judgment: February 3, 2014

Date of Release: February 5, 2014