

CITATION: *Clark v. Cen-Ta Real Estate Ltd et al*, 2025 ONSC 6225
COURT FILE NO.: CV-24-95515
DATE: 2025/11/06

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Chris Clark, Applicant

-and-

Cen-Ta Real Estate Ltd., Plum Financial Group Inc., Robert
Veillette, Fernando Bada and Anthony Bada, Respondents

BEFORE: Justice A. Doyle

COUNSEL: Chris Trivisonno and Emma Williams for the Applicant
Jeff Saikaley and Robert Ruddock for the Respondents

HEARD: In Writing

COSTS DECISION

[1] The court granted the application for leave to commence a derivative action pursuant to s. 246 of the *Ontario Business Corporations Act (OBCA)* in the name of Cen-Ta Real Estate Ltd (Cen-Ta) and Plum Financial Planning Ltd (Plum) against the companies' directors, Robert Veillette, Fernando Bada and Anthony Bada for breach of fiduciary duties and duties of care by awarding themselves and their companies unreasonable and unfair sums in salaries and fees. The proposed action seeks to recover monies that the directors paid to themselves and a court order setting out future reasonable compensation for directors.

[2] The applicant is already pursuing an oppression remedy against the same directors over the same conduct where he requests damages to be paid by the directors and a buy-out of his shares based on fair market value and damages for unmet shareholder expectations.

[3] The court also ordered that the applicant and the corporations equally share the cost of the derivative action.

[4] If the parties were unable to agree to the costs, they were to provide costs submissions.

[5] Having considered the parties' submissions, Costs Outlines and the *Rules of Civil Procedure*, the issue of costs is reserved to the Trial Judge.

Applicant's Position

[6] As the successful party, the applicant is seeking costs against the respondent directors on a partial indemnity basis the amount of \$33,733.03 as set out in their Costs Outline filed.

[7] The applicant is a 49.5% shareholder of Plum and 45% shareholder of Cen-Ta. If the companies are required to pay the costs, then the applicant will receive only a percentage of the actual costs he incurred. In addition, a costs order against the corporations will impose a financial burden on them.

[8] The companies were the object of the application rather than an active player.

[9] Also, the directors' conduct rise to *prima facie* breaches of their fiduciary duties to the companies.

Respondents' Position

[10] The Respondents submit that either there should be no costs or costs should be significantly reduced, to reflect the divided success on the application and findings against the applicant's own conduct. Alternatively, costs of the application should be ordered in the cause in the eventual derivative action (if it is pursued).

[11] The court rejected the applicant's request that the corporate respondents pay the fees and costs associated the derivative claim. Rather the court ordered that the costs be equally shared by the applicant and corporate respondents.

[12] Given this order, the costs of this application should also be shared by the parties.

[13] The court cast doubt on the viability of the applicant's proposed claim that the court make an "order prohibiting the defendants from drawing salaries or fees that exceed an amount to be set by the court". The court found that this would be intrusive and would require clear evidence.

[14] Also the court made an adverse finding against the applicant for being paid when he ceased providing services for a number of years.

Legal Principles

[15] The costs of a proceeding are in the discretion of the Court (s. 131(1) *Courts of Justice Act*). That discretion must be exercised on a principled basis (*Davies v. Clarington Municipality*, 2009 ONCA 722, 100 O.R. (3d) 66, at para. 40). Fixing costs is not merely a mechanical exercise; the amount awarded should, considering all the circumstances, be fair and reasonable (*Boucher v. Public Accountants Council for the Province of Ontario* (2004), 71 O.R. (3d) 291 (C.A.)). In a proper case, costs may be awarded against a successful party (r. 57.01 (2) of the *Rules*).

[16] As stated in *Boucher*, the Court must be fair and reasonable when exercising its discretion to award costs and the parties' expectation concerning the amount of a costs award is a relevant factor to be considered.

[17] Rule 57.01(1) of the *Rules* contains a non-exhaustive checklist of factors that guide the Court in its reasoning when awarding costs in the exercise of its discretion under s. 131 of the *Courts of Justice Act*.

Analysis

[18] The applicant was successful in obtaining permission to bring proceedings in the name of the respondent corporations against the respondent directors. The applicant is *prima facie* entitled to costs of the leave application.

[19] Costs are in the court's discretion and at this stage of these proceedings, where the action has not yet commenced, the court must still apply the general principles set out in *rule 57.01* and balance fairness amongst the parties.

[20] The court commented on the applicant continuing to receive remuneration from the corporations without providing any services.

[21] In its endorsement, the court identified significant overlap between the proposed derivative claim and the applicant's existing oppression action. There are similar core allegations and some duplication.

[22] It is likely the oppression action and the derivative claim will be heard together.

[23] There is also an issue as to whether the companies should be ordered to pay costs at the leave stage. Yet, the application is made on behalf of the corporations and benefits them.

[24] The respondent directors are not yet the defendants of a derivative action and the allegations against them has not been proven.

[25] In the circumstances, costs are reserved to the trial judge who will be in the best position to assess the costs of the entirety of the proceedings and the parties' conduct including the leave application.

Justice A. Doyle

Date: November 6, 2025

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COSTS DECISION

DOYLE J.

Released: November 06, 2025