CITATION: Aenos Food Services Inc. v. Tierney et al, 2026 ONSC 1478
COURT FILE NO.: CV-24-00094737-0000
DATE: 2026/03/11

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Aenos Food Services Inc., Appellant

-and-

Emily Tierney and Tierney Stauffer LLP, Respondents

BEFORE: Justice Williams

COUNSEL: Katie Black for the Appellant

Andrew Lenz for the Respondents

HEARD: December 11, 2025

REASONS FOR DECISION ON AN APPEAL

Overview

[1] Aenos Food Services Inc. appeals from an order made by an associate judge[1] in the context of a motion for particulars.

[2] In its motion before the associate judge, the appellant had sought particulars of several paragraphs of a statement of defence in a lawyer's negligence action. The associate judge dismissed the motion. The appellant does not take issue with the dismissal of the motion. The appellant appeals from an order that prohibited discovery motions without leave.

[3] The appeal was uncontested, although the respondents' counsel attended the hearing and made some brief submissions.

[1] The decision appealed from was a decision of Associate Judge Karen Perron.

The order under appeal

[4] In a decision dated December 13, 2024 and released March 7, 2025, the associate judge dismissed the appellant's motion for particulars.

[5] In her reasons, the associate judge said it was apparent from a review of the pleadings that one of the issues in dispute was the scope of the respondents' retainer. She noted that the appellant was seeking three categories of particulars: 1) particulars of an oral retainer agreement; 2) particulars of advice alleged to have been given by the law firm; and 3) particulars of instructions alleged to have been given by the appellant.

[6] The associate judge referenced the appellant's arguments that it required particulars so that it would know the case it was required to meet and that, without the requested particulars, it would not know whether to serve a reply. The associate judge also noted that the appellant had argued that the law firm's statement of defence included bald allegations that lacked material facts.

[7] The associate judge concluded that the particulars requested by the appellant were within the appellant's knowledge. The associate judge did not agree that the statement of defence lacked material facts, and she found that the information the appellant was seeking was more in the nature of evidence than fact.

[8] The associate judge then observed that the action was governed by the simplified procedure set out in Rule 76 of the *Rules of Civil Procedure,* R.R.O. 1990, Reg. 194. She noted that the simplified procedure was intended to streamline litigation to make it more cost effective. She noted that courts have routinely commented on how "motions culture" has contributed to delays and expense in court actions. She said the impact of this culture is even more pronounced in Rule 76 cases.

[9] The associate judge then said the action had been stuck at the pleadings stage because of the dispute over particulars. She said that, in her view, the motion had been completely unnecessary. She said the most practical and cost-effective manner of moving the case forward would have been to proceed to an early exchange of documents and examinations for discovery, which, she noted, had been proposed by the respondents' lawyer.

[10] The associate judge said an order for particulars is discretionary and that the court must be satisfied that such an order would be just. The associate judge declined to order any of the particulars requested by the appellant, having concluded that, in the context of this Rule 76 action, it would be unjust to do so.

[11] The associate judge then wrote:

> 39. In order to ensure that this matter moves forward effectively and does not get further bogged down at the discovery stage, I further order that the parties require leave of the Court prior to bringing any discovery motions. Leave can be sought by requesting a case conference before me by emailing the Office of the Associate Judges.

The grounds for appeal

[12] As I have indicated, the appellant does not appeal from the associate judge's refusal to order particulars. The appellant appeals from the order restricting discovery motions without leave.

[13] The appellant argues that the associate judge erred in law by making the order without jurisdiction. The appellant also argues that the associate judge erred by failing to give the parties notice of her intention to make the order and an opportunity to make submissions. The appellant notes that neither party had requested an order restricting discovery motions and that the associate judge did not inform the parties that she was contemplating making the order.

[14] The appellant also argues that the associate judge failed to provide sufficient reasons with respect to the factual and legal basis for imposing the discovery-related order.

[15] The appellant argues that the associate judge erred in law by making the order in the absence of evidence, submissions or any legal foundation that would have allowed her to impose the leave requirement on the basis of common law or the court's inherent jurisdiction.

[16] In the alternative, the appellant argues that the associate judge made a palpable and overriding error of fact when she found that the action had been delayed because of the dispute over particulars.

Standard of review

[17] The appellate standards of review set out in the Supreme Court of Canada decision in *Housen v. Nikolaisen,* 2022 SCC 33, apply to an appeal of a decision of an associate judge. The standard of review on a question of law is correctness. The standard of review for findings of fact is palpable and overriding error. I may interfere with the order under appeal only if the associate judge made an error of law or exercised her discretion on the wrong principles or misapprehended the evidence such that there is a palpable and overriding error. (*Zeitoun v. Economical Insurance Group,* 2008 CanLII 20996 (Ont. Div. Ct.), at paras 40 and 41, aff'd 2009 ONCA 415, at para 1.)

Analysis

Jurisdiction

[18] Associate judges do not have the inherent jurisdiction of federally appointed judges. Associate judges, formerly known as masters, are creatures of statute; their jurisdiction arises from the instruments that give them jurisdiction. (*R & V Construction Management Inc. v. Baradaran*, 2020 ONSC 3111, at para 23.)

[19] Section 86.1(6) of the *Courts of Justice Act*, R. S. O. 1990, c. C. 43, specifically provides that an associate judge has the jurisdiction conferred by the rules of court.

[20] Under Rule 37.02(2) of the *Rules of Civil Procedure*, an associate judge has jurisdiction to hear any motion in a proceeding, and has all the jurisdiction of a judge in respect of a motion, except where the power to grant the relief is conferred expressly on a judge by a statute or rule or in other circumstances which have no application here.

[21] An order prohibiting further motions without leave may be made by a judge or an associate judge. Rule 37.16 provides that both judges and associate judges may make these orders under certain circumstances:

> On motion by any party, a judge or associate judge may by order prohibit another party from making further motions in the proceeding without leave, where the judge or associate judge on the hearing of the motion is

> satisfied that the other party is attempting to delay or add to the costs of the proceeding or otherwise abuse the process of the court by a multiplicity of frivolous or vexatious motions.

[22] On the appeal before me, the associate judge's jurisdiction to make the order under appeal is not found in Rule 37.16. The rule requires a "motion by any party." Neither party in this case brought a motion for or otherwise requested an order prohibiting discovery motions without leave. Further, there was neither a finding nor even a suggestion in this case that, as required by Rule 37.16, a party was attempting to delay or add to the costs of the proceeding or abuse the process of the court by a multiplicity of frivolous or vexatious motions.

[23] Judges and associate judges are, however, empowered to impose terms and give directions when deciding motions. Rule 37.13 provides that, on the hearing of a motion, the presiding judge or officer may grant the relief sought or dismiss or adjourn the motion, in whole or in part and *with or without terms* (emphasis added); Rule 1.05 states that, when making an order under the *Rules of Civil Procedure*, the court (a defined term which, under Rule 1.03(1), includes an associate judge) *may impose such terms and give such directions as are just* (emphasis added).

[24] The appellant argues that the associate judge's jurisdiction to make the order under appeal cannot be found in either Rule 37.13 or Rule 1.05. The appellant argues that Rule 37.16, reproduced above, specifically addresses orders that prohibit further motions and sets out the preconditions that must be exist for these orders to be made. The respondents agreed, arguing that if jurisdiction for the order under appeal could be found in Rule 37.13 or Rule 1.05, this would create an impermissible "back door" approach to making an order that is clearly contemplated by another rule, Rule 37.16.

[25] In my view, the situation before the associate judge was not the type of situation Rule 37.16 is intended to address. As the appellant correctly noted, this was not a case in which multiple motions had been brought, and there was no evidence of intentional delay or abuse of the court's process. In other words, this was not a case where the associate judge was trying to shut down a vexatious litigant. This also was not a case where the associate judge's order prohibited all motions. The order under appeal is limited to discovery motions. The order was made in a Rule 76 case. As the associate judge pointed out, Rule 76 cases are intended to be streamlined and cost-

effective. Rule 76 includes limits on discovery. Rule 76.04(1)1, for example, prohibits written examinations for discovery; Rule 76.04(2) limits oral examinations to three hours per party. It would seem to me that making an order that limits discovery, including discovery motions, as a term of an another order on a motion in a Rule 76 case would be entirely consistent with the goals of Rule 76.

[26] The respondents argued that there was an insufficient nexus between the relief sought on the motion and the order under appeal for the associate judge to have made the order under appeal as a term under Rule 37.13 or Rule 1.05. Assuming without deciding that there could be merit to this argument in a different case, I find it to be without merit in this case. In this case, the respondents had included in their factum a request for a timetable for the exchange of documents and examinations for discovery "so that this matter can be moved along." I am satisfied that this request, which the associate judge granted, provided a clear nexus between the motion that was before her and the order under appeal, which the associate judge specifically said she made "to ensure that this matter moves forward effectively and does not get further bogged down at the discovery stage…"

[27] For these reasons, the appellant has not persuaded me that the associate judge was without jurisdiction to make the order under appeal. I find the associate judge was empowered to make the order under appeal as a term of her order on the appellant's motion, under either Rule 1.05 or Rule 37.13.

Procedural fairness

[28] Although I have found that the associate judge had jurisdiction to make the order under appeal, I agree with the appellant that such an order should not be made in the absence of notice to the parties and an opportunity to be heard.

[29] Neither party had requested an order that would place limits on discovery motions. This is evident from a review of the record that was before the associate judge. The relief sought by the appellant in its notice of motion was limited to an order that a demand for particulars be answered. There was no cross-motion by the respondents, although, as I noted above, in their factum, the

respondents had requested a schedule for the exchange of documents and examinations for discovery.

[30] The parties' counsel both said the order under appeal took them by surprise. They said they did not know the associate judge was considering making the order and, consequently, they made no submissions about whether it was warranted.

[31] In *Kallaba v. Bylykbashi*, 2006 CanLII 3953 (ON CA), the Court of Appeal set aside an order under s. 140 of the *Courts of Justice Act* declaring the appellant to be a vexatious litigant. The Court concluded that while it may have been open to the motion judge to grant the vexatious litigant order on the record before him, the relief had not clearly been sought in the proper form. The Court found that the appellant had not had an opportunity make submissions on the issue and that her right to fairness had been compromised. The vexatious litigant order was set aside.

[32] In *Sobeski v. Mamo*, 2012 ONCA 560 at para 38, the Court of Appeal found that a motion judge was not entitled, on his own motion, to devise a remedy that was not requested by either party to this dispute. The Court noted that this denied the parties a fair opportunity to address the issue. The Court of Appeal set aside the motion judge's order.

[33] In *Abdullahi v. C.A.S. of Toronto*, 2021 ONSC 5832, the Divisional Court considered whether a motion judge had erred in granting an order prohibiting the parties from bringing a motion for summary judgment. The parties did not know the order was being contemplated. Citing *Drummond v. Cadillac Fairview Corporation Limited*, 2019 ONCA 447, at paras. 13 and 14, the Court found there was a lack of procedural fairness and set aside the order.

[34] In the case before me, I am satisfied that, had the appellant known that the order under appeal was being contemplated, its counsel would have argued that the motion before the associate judge was the first and only motion in the action, and that the court, and not the parties, had been responsible for an adjournment of the motion that had resulted in a four-month delay. I am satisfied that the respondents would have argued that it would be unfair for them to be bound by a prohibition on discovery motions, when they had not brought any motions in the action. The associate judge may or may not have been swayed by these arguments. Regardless, the parties were entitled to have an opportunity to make them.

[35] I respectfully conclude that while the order under appeal was obviously made in the spirit of Rule 76 and with the best of intentions, due to the lack of procedural fairness, the order cannot stand.

Further grounds of appeal

[36] In the circumstances, I do not believe that it is necessary for me to consider the appellant's further grounds of appeal.

Disposition

[37] The appeal is granted. The order under appeal, para. 3 of the March 7, 2025 order, issued December 3, 2025, is set aside.

Costs

[38] The appeal was unopposed. The appellant did not seek costs. There shall be no costs of the appeal.

Justice Williams

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WILLIAMS J.

Released: March 11, 2026