

COURT FILE NO.: SC-18-000034916-0000

DATE: February 14, 2023

ONTARIO SUPERIOR COURT OF JUSTICE
NEWMARKET SMALL CLAIMS COURT

ROBERT LEPP

Plaintiff

– and –

**TECHA VAN LEEUWEN, ALEXANDER WRAY, MARNEE BUCKLES and TINA
DUNCAN**

Defendants

For the Plaintiff, Robert Lepp: Self-represented (not-appearing)

For the Defendant Techa Van Leeuwen: Charles A. Painter (unopposed)

For the Defendant Alexander Wray: Charles A. Painter (unopposed)

For the Defendant Marnee Buckles: Self-represented (not-appearing)

For the Defendant Tina Duncan: Gwendolyn L. Adrian

HEARD: February 14, 2023 (via Zoom)

DEPUTY JUDGE DENNIS ONG:

MOTION DECISION – RULE 12.02(3) MOTION TO DISMISS ACTION

SUMMARY OF THE DECISION

- [1] This is a motion made by Defendant Tina Duncan to dismiss the action pursuant Rule 12.02(3). For the reasons that follow, I shall be granting the motion to dismiss, with costs to the moving party, Ms. Duncan.

- [2] Today's motion is uncontested. Most notably, Mr. Lepp has inexplicably failed to appear. There were no written submissions filed by him before the motion. By failing to submit any materials nor appear, he has failed to explain why he has not complied with an undertaking he gave in Court to the Honourable Justice Mark L. Edwards of the Superior Court of Justice in a related matter, Action #CV-19-138806 reported at *The Corporation of the Town of Aurora v. Robert Lepp*, 2019 ONSC 6041. The undertaking Mr. Lepp gave was that as a pre-condition of him continuing with his Superior Court matter (CV-19-138806), Mr. Lepp was to dismiss his Small Claims Actions, which includes SC-18-0034916 (this present proceeding), and also SC-18-034972, SC-18-0034987.
- [3] Before the bringing of today's Rule 12 motion, Mr. Lepp has taken no steps to dismiss this matter. Submissions by counsel Ms. Adrian, representing Tina Duncan, indicated that Mr. Lepp had never properly given a position on this present motion to dismiss, only citing that he believed this matter would eventually be dismissed by administrative dismissal. The Defendants believe that this is an attempt by the Plaintiff to avoid any meaningful cost consequences of improperly initiating the Small Claims Court actions.
- [4] Notwithstanding Mr. Lepp's failure to appear, I did consider the possibility of adjourning the motion today to allow Mr. Lepp an opportunity to speak. Ms. Adrian stated that Mr. Lepp had represented to her last week that he was apparently to be having a medical procedure this morning. Further, Mr. Lepp had emailed Ms. Adrian at 9:42 a.m. this morning advising that he had apparently emailed proof of his unavailability to the Newmarket Small Claims Court scheduling email address. Notwithstanding the fact that if such an email had even been received and that the counter staff not absolutely not required to act as some kind of answering service for late-filed materials, I can confirm that there is no record whatsoever of any such request for deferral from Mr. Lepp in the court record. None has been received by the court staff since the motion.
- [5] To make matters even more dire for the non-attending Mr. Lepp, he was emailed by Ms. Adrian at 9:44 a.m. this morning to join the Zoom call while the motion was being heard. Mr. Lepp indeed continued not to attend so I was satisfied that sufficient efforts had been made to make Mr. Lepp aware of the motion, and by his failure to respond to a live email response, he was willingly choosing not to attend.
- [6] In Justice Edward's decision in *The Corporation of the Town of Aurora v. Robert Lepp*, 2019 ONSC 6041 at paragraph 25, it reads the following:
- [25] During the course of argument Mr. Lepp advised the court that he has attempted to have all of the Small Claims Court actions, including the three referenced ... dismissed by the Small Claims Court. Mr. Lepp implicitly acknowledged that the allegations in the Small Claims Court actions were duplicated in his action in this court and it was for that reason Mr. Lepp advised the court that he would not be pursuing those actions."
- [7] Justice Edwards further ordered the following, at paragraph 68:

[68] Mr. Lepp shall not initiate any further motion, action or proceeding against Aurora, its elected officials, employees, former employees or legal counsel, without first obtaining leave of this court. It shall be a pre-condition to Mr. Lepp continuing with this action that he fulfil his undertaking to this court that the actions in the Small Claims Court shall be disposed of by way of a dismissal order in the Small Claims Court, and that any costs awarded in the Small Claims Court against Mr. Lepp shall be paid by Mr. Lepp prior to his continuing with this action.

- [8] If Mr. Lepp will not comply with the undertaking he openly gave to Justice Edwards to dismiss this case, then the Defendant Duncan is clearly in her right to do what Mr. Lepp promised (and failed to do) by way of this motion. I rule that she shall also have her costs of having to take this unnecessary step, and her costs of defending the action.
- [9] In seeking costs, Ms. Adrian submitted that she expended a significantly larger amount to bring this motion but was willing to settle on an amount of \$2,500.00 all-inclusive to settle the motion and the costs of the action. Ms. Adrian indicated her hourly rate was in the \$350-415/hr ranges. She testified that she believed she had spent up to 300 hours reading unending sets of excessively set emails from Mr. Lepp. In fixing costs, I believe that Ms. Adrian's valuation of costs to be entirely reasonable, and will not reflect anywhere near the actual amount spent to defend this claim (which she would not be entitled to anyway on an actual indemnity basis – but this was understood and is not being sought). I thank Ms. Adrian for her reasonable costs figure, and grant it in its entirety.

ORDER:

- [10] In consideration of my reasons above regarding this motion, I make the following findings:
- (1) The Plaintiff's claim is dismissed, with costs fixed at \$2,500.00, inclusive of HST, interest and disbursements.

These costs are due within 30 days of today's order.



Delive

red: February 21, 2023

DEPUTY JUDGE DENNIS ONG