

CITATION: Theoharis v. Konstantinou, 2026 ONSC 3585

COURT FILE NO.: CV-25-7267

DATE: 2026 06 18

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Spyros Theoharis, Plaintiff

AND:

Zisi Konstantinou, Defendant

BEFORE: M.T. Doi J.

COUNSEL: John M. Gray, for the Moving Defendant

Sam A. Presvelos, for the Plaintiff

HEARD: March 27, 2026

ENDORSEMENT

Overview

[1] On this motion, the defendant seeks to transfer the parties' claims in the Small Claims Court to the Superior Court of Justice. The plaintiff's claim seeks damages for a breach of contract involving the parties' joint ownership of collectible coins. The defendant's claim is essentially a counterclaim that seeks shareholder oppression relief beyond the Small Claims Court's jurisdiction and implicates others that are unrelated to the plaintiff's claim. The plaintiff oppose a transfer of his claim but agrees to a transfer of the defendant's claim.

[2] For the reasons that follow, the motion by the defendant to transfer the plaintiff's claim is dismissed and the motion to transfer the counterclaim to this court is granted.

The Record

[3] I find that the plaintiff's supplementary record dated March 19, 2026 in response to the motion should be accepted for filing. The defendant unfairly split his case by introducing relevant

new evidence in his reply affidavit that should have been included in his initial supporting affidavit for the motion: *Johnson v. North America Palladium Ltd.*, 2018 ONSC 4496 at para 13. To ensure a proper record for the motion, and to allow both parties a fair opportunity to argue their case, I find that the defendant's reply affidavit and the plaintiff's supplementary record should be admitted for filing to ensure a fulsome and appropriate evidentiary record for the motion: *Johnson* at para 15; *Thompson v. Bursey*, 2026 ONSC 766 at para 42.

Background

[4] The parties are brothers-in-law and former business partners. Unfortunately, their families are estranged.

[5] On October 1, 2025, the plaintiff brought a claim for \$35,000.00 in damages in the Small Claims Court in Brampton. This claim involves a fairly straightforward dispute over proceeds from the sale of a coin collection that the parties bought as an investment and jointly owned (the "Coin Claim"). The joint ownership of the collection is not disputed as the defendant expressly wrote (i.e., in a message to his lawyer and the plaintiff) that the parties equally owned the collection on a "50/50" basis. At some point, the defendant allegedly sold a coin from the collection without informing the plaintiff, obtaining his consent, or sharing the proceeds. The plaintiff apparently responded by selling the remaining coins in the collection for \$135,000.00 in total with the defendant's knowledge and consent. The plaintiff brought the Coin Claim to recover a one-half share of the proceeds from the sale of the coins in the collection.

[6] The records that are relevant to the Coin Claim consist of purchase and sale records and some messages that the parties exchanged. Given its limited nature and scope, I find that claim will not require oral discoveries, expert reports, a pre-trial conference, or any procedures that are not available in the Small Claims Court.

[7] On November 3, 2025, the defendant defended the Coin Claim by filing a defence in the Small Claims Court that seeks unrelated relief including a set-off against any amounts owed to the plaintiff. On November 30, 2025, the defendant issued a claim in the Small Claims Court to pursue essentially a counterclaim for \$150,000.00 in damages plus certain shareholder remedies including declaratory and accounting relief in respect of two companies, 2115737 Ontario Inc. and Zispan Inc., and an individual, Nolan Anelevitz, who was an officer, director, and shareholder of Zispan

Inc. along with the plaintiff and defendant, respectively. The companies and Mr. Anelevitz have nothing to do with the coin collection and no interests in relation to the Coin Claim.

[8] Among other things, the Oppression Claim alleges that the plaintiff (i.e., the defendant by defendant's claim) conducted the affairs of 2115737 Ontario Inc. in a manner that is oppressive and unfairly prejudicial or in disregard to the defendant's interests, by misappropriating rent income funds from the company, falsely claiming expenses, and withholding revenues owed to the defendant. In addition, the Oppression Claim alleges that the plaintiff misappropriated from Zispan Inc., rendered the company unable to repay the defendant's shareholder loan, diverted the company's assets to Branded Productions (Canada) (i.e., a company owned by the plaintiff that carries on the same business as Zispan Inc.), and improperly diverted income from the defendant.

[9] The Oppression Claim seeks relief that clearly exceeds the jurisdiction of the Small Claims Court, as the defendant concedes. To this end, he filed a defence and later a claim in the Small Claims Court with the stated-intention of bringing this motion to have the entire proceeding (i.e., the Coin Claim and the Oppression Claim) transferred to the Superior Court.

[10] On January 8, 2026, the defendant brought this motion to transfer the Coin Claim and the Oppression Claim to this court.

Issue for Determination

[11] The central issue on this motion is whether the court should exercise its jurisdiction to transfer the Coin Claim to the Superior Court. As noted earlier, the plaintiff is not opposed to having just the Oppression Claim itself transferred to this court.

Legal Principles

[12] The discretion to transfer a Small Claims Court action to this court is exercised sparingly (i.e., as Superior Court actions expose parties to higher costs of pre-trial discovery and trial while depriving a plaintiff of their choice of court), and only when the party seeking the transfer satisfies their onus to establish that the claim is not capable of being justly and fairly resolved under the procedures available in the Small Claims Court: *Segura Mosquera v. Rogers Communications Inc.*,

2020 ONSC 6024 at para 6, affirmed 2021 ONCA 876 at para 12; *Macdonald v. Feldman*, 2022 ONSC 4818 at para 17. Considerations on a motion to transfer a claim to this court include:

- a. The complexity of the litigation.
- b. The role and importance of pre-trial discovery and expert evidence.
- c. Whether the case raises issues of general importance.
- d. The desire for a just and fair determination.

Segura (CA) at para 12; *Crane Canada Co. v. Montis Sorgic Associates Inc.*, [2006] OJ No 1999 (CA) at paras 2, 8; *Autometric Autobody Inc. v. High Performance Coatings Inc.*, 2014 ONSC 6073 (Div Ct) at paras 9-10; *Farlow v. Hospital for Sick Children*, 2009 CanLII 63602 (ONSC) at para 20; *Vigna v. Toronto Stock Exchange*, [1998] OJ No 4924 (Div Ct).

[13] In deciding a transfer motion, it is important for the court to scrutinize the issues in dispute and decide whether those issues can be justly and fairly resolved by the procedures available in Small Claims Court, that will suffice is many if not most cases: *Vigna v. Toronto Stock Exchange*, [1998] OJ No 4924 (Div Ct). Cases within the Small Claims Court's jurisdiction should ordinarily be tried there unless there is prejudice to the other party that cannot be easily remedied: *Horvat et al. v. Goldstein*, 2024 ONSC 486 at para 16. In deciding whether it is appropriate to transfer a Small Claims Court action to the Superior Court, the court must consider its obligation to secure the just, most expeditious and least expensive determination of every civil proceeding on the merits: r. 1.04; *Horvat* at para 17. Absent compelling reasons, a transfer may undermine the jurisdictional legitimacy of the Small Claims Court: *Segura* at para 13. Cases having evidence and legal issues that are fairly straightforward are well suited for the Small Claims Court where its lack of formality and procedures allow cases to be decided more quickly than in this court: *Farlow* at para 49.

Analysis

a. The Coin Claim

[14] As set out below, I am not persuaded that the Coin Claim is incapable of being justly and fairly resolved under the procedures available in the Small Claims Court: *Segura* at para 12; *Autometric* at paras 9-10.

[15] The Coin Claim is not complex, either factually or legally. It involves a straightforward dispute over the division of proceeds from the sale of jointly-owned collectible coins. The relevant facts are narrow, and the applicable legal principles in contract and unjust enrichment are settled. I accept that the chronology of events and relevant context will, in large part, be based on records that will mitigate any complexity in the case: *Kreppner v. HMQ*, 2019 ONSC 667 at para 27. As mentioned earlier, the parties agree that the joint-ownership of the coins is not disputed. Having regard to the motion record and submissions, I am not persuaded that the defendant has shown any specific factual or legal complexity in the Coin Claim that would favour the proposed transfer.

[16] Any complexity in this matter flows almost entirely from the Oppression Claim that shares no substantive overlap with the Coin Claim. The transfer sought by the defendant flows from a deliberate strategy to counterclaim in the Small Claims action despite knowing the relief sought clearly exceeded the Small Claims Court's jurisdiction (i.e., as the defendant conceded in writing through counsel on October 24, 2025). On the facts of this case, I am concerned that the defendant made the Oppression Claim by design (i.e., despite an obvious inability to obtain the relief sought) for the collateral purpose of gaining a strategic advantage by displacing the plaintiff's choice of forum. The discretion to transfer an action should not be exercised to permit a party to obtain a strategic advantage: *Segura (SCJ)* at para 10; *Horvat* at para 41. On this motion, I find that the focus of the analysis should be on the Coin Claim that the defendant is seeking to transfer to this court, and not on the largely unrelated Oppression Claim that the defendant brought in an effort to traverse the entire proceeding to this court: *Macdonald v. Feldman* 2022 ONSC 4818 at para 46.

[17] Expert evidence is not needed to adjudicate the Coin Claim, in which the relevant evidence consists of records about the purchase and sale of the coins and the parties' communications, most of which has always been within the possession or control of the defendant. Both parties agree that no valuation, actuarial, accounting, or other expert evidence is required to adjudicate the claim. In any event, the Small Claims Court may receive expert evidence: r. 18.02(2)(1.) of the *Rules of the Small Claims Court*.

[18] From the record and submissions on this motion, I am satisfied that the Coin Claim does not require oral discoveries or extensive documentary production. To satisfy the discovery factor, the moving party must establish that the absence of discovery, in accordance with the *Rules of Civil Procedure*, would deny their ability to defend the claim through a fair and just process:

Kreppner at para 37. The documents are limited and the issues do not involve the kind of contested documentary record that would require pre-trial discovery. Among other things, the defendant has not identified records that are not already in his possession: *Ibid.* In addition, there is no dispute that the defendant sold the collectible coins that were in his possession. I am not persuaded that the defendant has shown that discovery in accordance with the *Rules of Civil Procedure* is needed to defend the Coin Claim.

[19] I find that the issues raised in the Coin Claim do not raise issues of general importance. Where a claim relates to specific facts and calls for the application of established legal principles, there are no issues of general importance: *Macdonald* at para 49. In this case, the importance of the issues in the Coin Claim do not extend beyond the specific interests of the plaintiff and the defendant, respectfully. The unequal division of proceeds from the sale of the coin collection is inherently a private matter that only impacts the immediate parties and cannot reasonably have any broader significance or consequence beyond them.

[20] I am satisfied that the Small Claims Court is well-equipped to afford a just and fair decision for the Coin Claim that squarely falls within its monetary jurisdiction. The claim seeks a decision on relatively straightforward factual and legal issues and does not require further procedural tools that are unavailable in the Small Claims Court. The plaintiff chose to bring the claim in the Small Claims Court because it offers an affordable and expeditious procedure for resolving what is a fairly simple matter. This is the very purpose of the Small Claims Court.

[21] The defendant seeks to have the Coin Claim joined with the Oppression Claim to offset any amount owed to the plaintiff against the defendant's much larger claim for oppression relief. Although this is a factor that may favour the proposed transfer, it is just one factor to consider. However, in the circumstances of this case, I am not persuaded that the claim by the defendant for set-off should somehow be permitted to trump the plaintiff's choice of court. The Coin Claim predates the Oppression Claim. Neither 2115737 Ontario Inc. nor Zispan Inc. have any connection to the coin collection or the sale of the coins that gives rise to the subject of this claim. The facts and records for the Coin Claim are discrete from those in the Oppression Claim. Each is a distinct claim that raises different facts and areas of law (i.e., contract and unjust enrichment law in relation to the Coin Claim, and shareholder oppression and fiduciary law under jurisprudence and the *Business Corporations Act*, RSO 1990, c. B.16 in respect of the Oppression Claim). Importantly,

the Oppression Claim likely will involve motions for interim relief, including leave to pursue a derivative action, and deprive the plaintiff of his choice of forum for the Coin Claim while also exposing him to the significantly higher costs and delays that feature in litigation before this court.

[22] The resolution of the Coin Claim will not depend on the outcome of the Oppression Claim, and neither will be affected by decisions made in the other. Although the parties are former business partners and purchased the coin collection as an investment, among other endeavours they shared, I am satisfied that the Coin Claim raises a discrete issue that is distinct from the Oppression Claim. As there are no overlapping facts that connect the claims, there is no risk of inconsistent findings as the claims are truly independent of one another. In effect, a resolution of the Coin Claim will not, in any way, depend on or affect the outcome of the Oppression Claim involving 2115737 Ontario Inc. and Zispan Inc., respectively. Although there is some overlap in the parties and the contractual arrangements between the claims, I find that the impact on the plaintiff if the Coin Claim were transferred to the Superior Court, including the added time, cost, and complexity in litigating the claim in this court, would be unduly burdensome and unfair: *8518076 Canada Inc. v. Quiznos Canada Restaurant Corporation*, 2018 ONSC 1519 at para 14. In any event, as the defendant has not led compelling evidence to show that he would likely succeed with the Oppression Claim, I find that a transfer to accommodate a potential set-off of damages should not be granted to avoid delay in adjudicating the Coin Claim.

[23] If the Coin Claim were transferred to the Superior Court, I accept that the plaintiff would suffer prejudice as the timeframe for its adjudication would significantly increase by being tethered to the more complex Oppression Claim. The plaintiff's fairly simple Coin Claim would be forced to proceed through a pre-trial discovery process, including examinations for discovery, and a pre-trial conference, that is unnecessary for its adjudication.

[24] As noted earlier, the discretion to transfer a case from the Small Claims court to this court is exercised sparingly: *Segura (CA)* at para 12. On balance, I see no compelling factors favouring the proposed transfer of the Coin Claim to this court, and find that permitting the transfer would undermine the jurisdiction of the Small Claims Court that is equipped with adequate procedures for adjudicating the claim. On the particular facts of this case, I find the plaintiff should be allowed to take advantage of the informal, affordable, and timely procedures available in the Small Claims

Court to achieve a just, most expeditious, and least expensive determination of the Coin Claim on its merits: r.1.04(1); *Laurentide Kitchens Inc. v. Homestars Inc.*, 2022 ONCA 48 at para 43.

b. The Oppression Claim

[25] As noted earlier, I am concerned by the manner in which the defendant brought the Oppression Claim as a counterclaim in the Small Claims Court that apparently was done by design to strategically undermine the plaintiff's choice of court for the Coin Claim by fashioning a transfer of the entire Small Claims Court proceeding to this court. In particular, I am troubled by his apparent decision to misrepresent the relief sought in the Oppression Claim so the Small Claims Court would take the claim for filing even though the relief sought clearly exceeded its jurisdiction. That said, I accept that the Oppression Claim should be transferred to the Superior Court so it may be adjudicated and decided appropriately.

[26] Before filing the Oppression Claim in the Small Claims Court, defendant's counsel openly conceded that the oppression and other relief sought in the claim could not be granted by that court given its limited jurisdiction. Despite this, however, the defendant proceeded to deliver a defence to the Coin Claim on November 3, 2025 that advanced a "Set-off and Counterclaim" in the Small Claims Court in which he raised a shareholder oppression claim against the plaintiff for a minimum of \$150,000.00 in damages and other relief in respect of 2115737 Ontario Inc. and Zispan Inc., respectively, including declaratory relief that he knew was unavailable in the Small Claims Court.

[27] On November 30, 2025, the defendant filed a defendant's claim to formally commence the Oppression Claim in the Small Claims Court that sought \$150,000.00 in damages and a declaration of oppression against the plaintiff with interlocutory relief for accountings in respect of 2115737 Ontario Inc. and Zispan Inc., respectively. The Oppression Claim is wholly unrelated to the Coin Claim beyond the claim to set-off damages as between the claims. To allow the Oppression Claim to be filed with the Small Claims Court, the defendant through counsel misrepresented the actual quantum of the claim by stating in filings (Form 10A) that the claim sought only \$50,000.00 in damages even though the actual relief pleaded (i.e., that sought \$150,000.00 in damages as set out in para 1 of the claim) greatly exceeded this amount. This was not an error or inadvertence. In his reply affidavit, the defendant attested that this was intentionally done after the Small Claims Court previously rejected the Oppression Claim for filing when its true quantum was disclosed. To allow

the irregular claim to be filed in the Small Claims Court, its quantum was misrepresented as a form of a work-around with notice on serving the Oppression Claim that it would have to be transferred to the Superior Court given the relief being sought.

[28] I share the plaintiff's concern over the defendant's litigation strategy of starting a claim by misrepresenting its nature so it would be accepted for filing while simultaneously arguing the relief pleaded was unavailable making it necessary to transfer the claim to this court for determination. Respectfully, I find that this strategy was inappropriate and should not be encouraged.

[29] The Coin Claim and the Oppression Claim are factually and legally distinct. Each involves different parties, with the Coin Claim involving the plaintiff and the defendant and the Oppression Claim involving 2115737 Ontario Inc., Zispan Inc., and Mr. Anelevitz, respectively.

[30] The defendant's litigation strategy has already delayed an adjudication of the Coin Claim. On January 12, 2026, a settlement conference in the Small Claims Court was adjourned due to this motion by the defendant to transfer the proceedings to this court.

[31] The real motive behind joining the claims is the defendant's wish to offset any amounts that he may owe on the Coin Claim against the amount he believes the plaintiff will owe him in respect of the Oppression Claim that must proceed in the Superior Court given the relief sought. Although this factor may favour having the Coin Claim transferred to this court, it is just one factor among many that, in my view, is overshadowed by others that favour preserving the plaintiff's choice of court to ensure a just, most expeditious, and least expensive determination of the claim on its merits, as set out earlier. This factor is also premised on a presumption that the defendant's Oppression Claim will ultimately succeed, which is a possible outcome that remains less than clear on the limited record before me at this time. Among other things, the defendant has not obtained leave for his derivative action.

[32] The plaintiff brought the Coin Claim in the Small Claims Court because it provides an affordable and expeditious forum to resolve a simple matter. It was the appropriate jurisdiction for the claim. The defendant's Oppression Claim has nothing to do with the plaintiff's Coin Claim. Respectfully, I find that the one claim should not be permitted to derail the other.

[33] Ultimately, having regard to the nature of the relief being sought in the Oppression Claim, I am satisfied that the unopposed motion to transfer the Oppression Claim to this court should be granted to permit the defendant a fair and just opportunity to obtain the relief sought. It was always open for the defendant to bring the Oppression Claim in the Superior Court where it belongs. His failure to do so was a direct consequence of his litigation strategy.

Outcome

[34] Based on the foregoing, the defendant's motion to transfer the Coin Claim is dismissed and the unopposed motion to transfer the Oppression Claim is granted.

[35] Should the parties not agree on costs, the plaintiff may file written costs submissions of up to 3 pages (not including his costs outline and any offer(s) to settle) within 10 days, and the defendant may file responding submissions on the same terms within a further 10 days. Reply submissions shall not be delivered without leave.

Date: June 18, 2026

M.T. Doi J.

CITATION: Theoharis v. Konstantinou, 2026 ONSC 3585
COURT FILE NO.: CV-25-7267
DATE: 2026 06 18

**ONTARIO
SUPERIOR COURT OF JUSTICE**

RE: Spyros Theoharis, Plaintiff

AND:

Zisi Konstantinou, Defendant

BEFORE: M.T. Doi J.

COUNSEL: John M. Gray, for the Moving
Defendant

Sam A. Presvelos, for the Plaintiff

ENDORSEMENT

M.T. Doi J.

DATE: June 18, 2026