

ONTARIO SUPERIOR COURT OF JUSTICE

RE: John Hauser and Karine Hauser, Plaintiffs

AND:

Phalan R.C. Flying Club Inc. et. al., Defendants

BEFORE: C. MacLeod RSJ

COUNSEL: Kevin Butler, for the Plaintiff

Albert Brunet, for the Defendants

HEARD: April 16, 2026

REASONS FOR DECISION

[1] This is a motion by the plaintiffs to transfer actions from Small Claims Court and to consolidate them with this action. The defendants resist the motion which they categorize as abuse of process.

[2] There can be legitimate reasons why a party who has commenced an action in Small Claims Court might require that it be transferred to Superior Court proper and in cases where justice requires it, a superior court judge may grant that relief. What the court will not allow is a strategic choice by the plaintiff followed by a prejudicial transfer that duplicates costs, promotes delay and is unfair to the defendants. Nor will it readily allow a transfer that undermines the administration of justice by defeating the legislative intention that the Small Claims Court is an efficient and legitimate process for resolving disputes.¹

[3] In these circumstances the plaintiffs cannot show that the initial choice to proceed in Small Claims Court (SCC) was a mistake or that a just result cannot be obtained in the forum they initially chose. The appropriate disposition is to proceed to trial in SCC and to stay the proceeding in the Superior Court of Justice (SCJ) until the outcome is known. If the plaintiffs are successful in SCC and subsequently require injunctive or other remedies because damages are not an adequate remedy, they may be able to revive the SCJ proceeding at that time.

¹ *Segura Mosquera v. Rogers Communications Inc.*, 2020 ONSC 6024 (CanLII) aff'd 2021 ONCA 876 (CanLII)

Background

[4] The Phelan R.C. Flying Club Inc. was founded in 1988 to provide a facility for enthusiasts of radio remote controlled model aircraft (R.C. aircraft). It operates the Lou McDonald airfield on premises located on Phelan Rd. E. between First Line Rd. and Second Line Rd., a rural location in the City of Ottawa. The Club maintains an asphalted runway and other facilities on the site and is registered with the Model Aeronautics Association of Canada.

[5] Operation of R.C. model aircraft and drones is federally regulated with specific and more stringent pilot licencing regulations applying for larger and more powerful aircraft. Some of the model aircraft operated by club members are of significant size and include scale models of World War II fighters and bombers.

[6] The plaintiffs purchased the residential property located directly across the road from the flying club in 2019. They object to the noise made by the model airplanes and object to flights of model aircraft and drones which they claim to sometimes overfly their property. As the history of this matter discloses, the relationship between the plaintiffs and the Club members has become increasingly fractious.

[7] It appears that, starting shortly after they moved into their property, the plaintiffs launched a series of complaints to the Club, to the City and to Transport Canada and other authorities. The plaintiff, John Hauser has also operated a web site “dangerousdrone.ca” which identifies public safety concerns relating to the Club and the operation of R.C. aircraft. He has repeatedly made video recordings of the Club’s operations and there have been confrontations with members and officers of the Club. There are claims and counter claims of trespass, harassment, threatening and assault.

[8] Beginning in 2021, the plaintiffs launched two small claims court actions against individual members of the Club. The claims have been amended and are now detailed and voluminous. The defendants regard these actions as simply illegitimate attempts to harass them. In at least one of those actions, (SC-21-160418) the plaintiffs originally asked for injunctive relief. That claim for relief was struck by order of Deputy Judge Conway on December 17, 2021. Since then, the actions have continued with the plaintiffs seeking monetary damages against the individual members.

[9] On January 24, 2023 the Club issued its own small claims court action against John Hauser. (SC-23-163589) The Club seeks damages for intentional interference with economic relations, nuisance, and loss of enjoyment of property. The Club claims that Mr. Hauser’s unreasonable and intimidating actions have caused a significant drop in membership.

[10] At a Settlement Conference on May 16, 2023, with the consent of the parties, Deputy Judge Knutsen ordered that two of the Hauser claims be tried together with the Phelan Flying Club claim. (SC-21-160418, SC-22-160984 and SC-23-163589).

[11] On June 19, 2023 the plaintiffs issued another claim against another member of the Club. (SC-23-164388). Mr. Hauser attests that there was also another action by the plaintiffs against another individual but that action was undefended and has been resolved. There have been numerous appearances in connection with the four remaining live SCC actions. On June 30, 2023,

for example, there was a production motion before Deputy Judge Conway. On October 3, 2023 there was another lengthy motion before Deputy Judge Stauffer.

[12] At the October 3 hearing, Stauffer DJ ordered that all four actions be tried together and recorded that “the parties have agreed that no further claims shall be brought against any other members of Phalen up until the time of trial.” He ordered certain additional items of disclosure.

[13] On April 29th, 2024, the plaintiffs commenced the present action in the SCJ. The plaintiffs seek temporary and permanent injunctions, an order closing down the operations of the Club, terminating its lease, declaratory relief, damages and punitive damages. The pleading largely replicates the facts pleaded in the SCC actions but now specifically asserts that the “defendants specifically targeted [the plaintiffs] to run them out of the neighbourhood” and pleads that the Club is vicariously liable for the actions of the members and that the landlord is liable for permitting the Club to carry out unlawful activities on the premises.

[14] That action is in its infancy. The plaintiffs bring this motion to move the SCC actions and consolidate them with the new proceeding. The result would be to abandon the procedural steps already taken at a time when the SCC consolidated action should be on the eve of trial. Though some of the production and disclosure could be salvaged, the parties would effectively be starting over with the full panoply of the *Rules of Civil Procedure*.²

The legal framework

[15] Since September 1, 1990, the Small Claims Court has been a branch of the Superior Court of Justice.³ Although styled a branch of the SCJ, SCC is treated functionally as a separate court. SCC is intended to be a simple and efficient method of adjudicating relatively modest monetary claims. It utilizes summary procedures and modified rules of evidence.⁴

[16] Although the legislation is drafted as if a judge of the SCJ presumptively presides over SCC trials, that never occurs. The legislation also permits a deputy judge of the Small Claims Court or the Small Claims Court Administrative Judge (who only sits in Toronto) to preside.⁵ In this Region and in most of the province, it is always a Deputy Judge who presides (a senior lawyer who serves on a *per diem* basis). They are the backbone of what is now the busiest civil court in the province measured by the number of claims.

[17] There is a provision in the CJA specifically permitting cases from the SCJ to be moved into SCC (s. 23 (2) of the CJA). There is also a prohibition on commencing matters that are within

² RRO 1990, Reg 194, as amended

³ *Courts of Justice Amendment Act, 1989 (no.1)*, S.O. 1989, c. 55, s. 21 in force Sept.1, 1990 Immediately prior to that, small claims were dealt with in the Provincial Court (Civil Division). See now *Courts of Justice Act*, RSO 1990, c. C-43 as amended, s. 22 (CJA)

⁴ See *Courts of Justice Act*, *supra*, s. 25 & 27

⁵ See s. 24 of the Act. Until the last of them retired, the Act also provided for former judges of the Provincial Court (Civil Division) to preside. That provision has now been repealed.

the jurisdiction of the SCC in SCJ (s. 23 (1.1)). There is no specific legislative provision to transfer a SCC proceeding to SCJ.

[18] There is statutory authority to consolidate a small claims action with a superior court action and that is to be found in s. 107 of the CJA. This is the section relied upon by the plaintiffs. It reads in part as follows:

107(1) Consolidation of proceedings in different courts

Where two or more proceedings are pending in two or more different courts, and the proceedings,

- (a) have a question of law or fact in common;
- (b) claim relief arising out of the same transaction or occurrence or series of transactions or occurrences; or
- (c) for any other reason ought to be the subject of an order under this section,

an order may, on motion, be made,

- (d) transferring any of the proceedings to another court and requiring the proceedings to be consolidated, or to be heard at the same time, or one immediately after the other; or
- (e) requiring any of the proceedings to be,

- (i) stayed until after the determination of any other of them, or

- (ii) asserted by way of counterclaim in any other of them.

107(2) Transfer from Small Claims Court

A proceeding in the Small Claims Court shall not be transferred under clause (1)(d) to the Superior Court of Justice without the consent of the plaintiff in the proceeding in the Small Claims Court.

107(3) Same

A proceeding in the Small Claims Court shall not be required under subclause (1)(e)(ii) to be asserted by way of counterclaim in a proceeding in the Superior Court of Justice without the consent of the plaintiff in the proceeding in the Small Claims Court.

[19] A judge also has inherent jurisdiction to transfer a case as part of the court's jurisdiction to control its own process and in a rare case may do so even where the plaintiff objects.⁶ Of course, in the case at bar subsections (2) and (3) do not apply to three of the actions because it is not the plaintiffs that object. They are the moving parties. It is the defendants who object to the plaintiffs starting a new action in the SCJ and then trying to use s. 107 to move the SCC actions into the SCJ by means of a consolidation order. The defendants regard this as a form of "bait and switch" to unfairly permit the plaintiffs to raise the costs, complicate the procedures and impose heightened litigation risks once the SCC procedural rules have been utilized and the cases are essentially ready

⁶ *Autometric Autobody Inc. v. High Performance Coatings Inc.*, 2014 ONSC 6073 (Div. Ct.)

for trial. The Club and members are the plaintiffs in one of the four actions and they do not consent to the transfer.

[20] As the jurisprudence makes clear, one of the purposes of the legislation is to establish and maintain the integrity of a small claims process. Even when it is requested by the plaintiff (who chose the original forum) a transfer should only be granted if the case cannot be justly and fairly resolved using the procedures in the SCC.

[21] A transfer should only be granted where justice requires it even if the result is two proceedings in different courts.⁷ The court should also be cautious of a transfer request that appears to be for a collateral purpose. The leading case dealing with this is *Segura Mosquera v. Rogers Communications Inc.* referred to in the introduction.⁸

[22] In *Segura Mosquera*, at paragraph 12, the Court of Appeal endorsed the motion judge's summary of the principles involved in such transfers. That summary appears at paragraphs 6 – 11 of the decision at first instance. In brief, the discretion to transfer should be exercised rarely and the onus is on the party seeking the transfer to justify it. The court must either be satisfied that the filings in Small Claims Court were a mistake or that a just or fair adjudication of the case cannot be made unless a transfer is ordered.⁹ Where a transfer motion is allowed, terms may be imposed to limit prejudice to the responding party.¹⁰

[23] Injunctive relief is not available in Small Claims Court but the plaintiffs have known that since their pleading was partially struck in December of 2021. Transfers have been refused by the court when it appears that the only reason for doing so is to get access to procedures that are not available in SCC.¹¹ Similarly, the court has refused to transfer a case from SCC just because the other party wishes to bring a counterclaim that could not be in SCC.¹² Conversely, in another case where a defendant had launched what was effectively a counter claim in the Superior Court, the court ordered the new action stayed pending the result in SCC.¹³ In short, the court will not condone procedural gymnastics to force a matter out of SCC if it can reasonably be adjudicated in that forum.

[24] The point to stress is that transfers will not readily be granted, even when it is the plaintiff who requests it. In all cases, the court may impose terms and take steps to limit prejudice to the parties, discourage abuse of process, discourage multiple lawsuits and to promote judicial efficiency. As an alternative to transfer and consolidations, s. 107 (1) (d) of the CJA, quoted above, also provides the court with the option of staying any of the actions until others have been heard.

⁷ *Autometric*, *supra* at para. 12

⁸ See note 1

⁹ *Segura Mosquera*, paras. 6 – 11 per Gomery J. at first instance and paras 12 – 13 of the decision by the Court of Appeal

¹⁰ *Horvat et al. v. Goldstein*, 2024 ONSC 486

¹¹ *Macdonald v. Feldman*, 2022 ONSC 4818

¹² *Theoharis v. Konstantinou*, 2026 ONSC 3585

¹³ *MDG Newmarket Inc. v. Symonds*, 2022 ONSC 6481

Decision and Order

[25] In my view the appropriate outcome is to stay the SCJ action and to order the expedited trial of the consolidated SCC actions. After all, the injunctive relief would neither be required or justified if the plaintiff's allegations cannot be justified, if the Club and its members have not been acting illegally or tortiously and the plaintiffs lose in SCC. Those findings should be binding in the SCJ proceeding. This dispute has been ongoing since 2019 and to date no one has sought interim injunctive relief or sought urgent access to the court to do so.

[26] If the plaintiff is successful in SCC and damages then appear to be an inadequate remedy, the court could lift the stay and the SCJ could consider the imposition of permanent mandatory orders or injunctions. This could include the claim to void or expunge the lease and hold the landlord liable. None of that will be appropriate if the plaintiffs cannot prove their cases or if they are found liable in the action in which they are defendants. Similarly, if a situation of urgency occurs which requires an interlocutory injunction, the moving party could also seek to lift the stay. But the parties should not be required to run up costs in two separate forums simultaneously.

[27] Consequently, I am dismissing the plaintiff's motion and in the exercise of my discretion pursuant to s. 107 (1) (d) of the *Courts of Justice Act*, I am staying this SCJ action. The parties are to proceed to trial in the SCC and following that trial either party may move to lift the stay if it appears appropriate to do so.

[28] I may be spoken to concerning the costs of this motion.

Mr. Justice C. MacLeod

Date: July 8, 2026