

# COURT OF APPEAL FOR ONTARIO

CITATION: Skypower CL 1 LP v. Ontario Power Authority, 2015 ONCA 427

DATE: 20150611

DOCKET: C59869

Juriansz, Rouleau and Lauwers JJ.A.

BETWEEN

Skypower CL 1 LP, Sunspark LP, Greengiant LP, Luminescent LP, Brilliance LP, Shinylight LP, Clearlight LP, Centerlight LP, Panelight LP, Avidlight LP, Starlight LP, Winterlight LP, Springlight LP, Autumnlight LP, Stagelight LP, Sunnypark LP, Brightpark LP, Oxford Solar Park LP, Crystallight LP, Novapark LP, Stanford LP, Surelight LP, Solarcells LP, Absolutelight LP, Astrallight LP, Blazinglight LP, Eastlight LP, Glowinglight LP, Houselight LP, Radiantlight LP, Realsunny LP, Shimmerlight LP, Twinklelight LP, Maxlight LP, Keylight LP, Maglight LP, Horizonlight LP, Globallight LP, Westernlight LP, Southlight LP, Stormlight LP, Astrolight LP, Superlight LP, Spotlight Solar Park LP, Sparklight LP, Sagelight LP, Reallight Solar Park LP, Orangelight LP, Onelight Solar Park LP, Glowlight LP, Firelight LP, Finitelight LP, Everlight Solar Park LP, Copperlight LP, Brightlight Solar Park LP, Bluelight Solar Park LP, Photonlight LP, Cleanlight LP, Smartlight Solar Park LP, Emittinglight LP, Purelight LP, Newlight Solar Park LP, Siliconlight LP, Mainlight LP, Brilliantlight Solar Park LP, Extralight LP, Shiningstar Solar Park LP, Infinitelight Solar Park LP, Directlight Solar Park LP, Forwardlight LP, Progressivelight LP, Advancelight LP, Nextlight LP, Dawnlight LP, Futurelight LP, Zoomlight LP, Yellowlight LP, Royallight LP, Midlight LP, Kinglight LP, Sollight Solar Park LP, Hubblelight LP, Galaxylight LP, Laserlight Solar Park LP, Atomlight LP, Joylight LP, Alphalight LP, Betalight Solar Park LP, Gammalight LP, Omegalight LP, Prismlight LP, Aqualight Solar Park LP, Sigmalight LP, Rollinglight LP, Rainbowlight Solar Park LP, Distinctlight LP, Mistlight LP, Glitterlight LP, Sapphirelight LP, Rubylight LP, Magnificentlight LP, Flarelight LP, Sheerlight LP, Vividlight LP, Fulllight LP, Majesticlight LP, Orientlight LP, Ancientlight LP, Regalight LP, Extravagantlight LP, Illustriouslight LP, Violetlight LP, Eveninglight LP, Bloomlight Solar Park LP, Sunnydaylight LP, Calmlight LP, Classiclight Solar Park LP, And Flashlight LP

Plaintiffs (Appellants)

and

Ontario Power Authority and Her Majesty The Queen In Right Of Ontario

Defendants (Respondents)

Timothy H. Gilbert, Matthew Diskin and Andrew Moser, for the appellants

Lise Favreau, Amy Leamen, Howard B. Borlack and David Elmaleh, for the respondents

Heard and released orally: June 5, 2015

On appeal from the order of Justice Victoria R. Chiappetta of the Superior Court of Justice, dated December 15, 2014.

### ENDORSEMENT

[1] The appeal must be dismissed.

[2] As the motion judge found, the appellants could have raised in the judicial review application—in which they attacked the lawfulness of the Minister's direction to the OPA, and the resulting changes to the FIT program—the allegation that they were specifically targeted. As this court said in *Aba-Alkail v University of Ottawa*, 2013 ONCA 633 at para. 12:

...the abuse of process doctrine can apply not only to bar re-litigation of issues that were actually determined in the administrative process, but also to issues that could have been determined (*Ontario v. Lipsitz*, 2011 ONCA 466 at para. 88). This gives further incentive to raise all issues at the administrative proceeding and to participate "with full vigour".

[3] The motion judge was correct in deciding that the appellants' failure to raise the targeting allegation in the judicial review proceedings was sufficient for the abuse of process doctrine to apply.

[4] The issue then, is whether the motion judge erred in deciding not to exercise her discretion to permit the action to proceed nevertheless. She found the appellants had a good opportunity to put their position forward in the judicial review proceedings, and the respondents' refusal to produce certain documents in those proceedings did not result in any unfairness. Her conclusion that "not applying the doctrine of abuse of process in this case would offend the principle of finality and undermine the credibility of the judicial process" is deserving of deference.

[5] We need not deal with the appellants' other arguments, as the finding of abuse of process forecloses their equitable as well as their legal claims.

[6] As there is no error of principle in her exercise of that discretion, the appeal is dismissed. Each of the respondents is entitled to costs of \$10,000, inclusive of disbursements and taxes.

"R.G. Juriansz J.A."

"Paul Rouleau J.A."

"P. Lauwers J.A."