

 [Hilltop Group Ltd. v. Katana](#)

Ontario Judgments

Ontario Court of Justice (General Division)

Divisional Court

O'Driscoll J.

Heard: July 23, 1998.

Oral judgment: August 14, 1998.

Court File No. 96-CU-106768 and Divisional No. 433/98

[1998] O.J. No. 3263 | [117 O.A.C. 384](#) | [81 A.C.W.S. \(3d\) 755](#)

Between Hilltop Group Limited, Lorne Wilson and Joanne Wilson, applicants/plaintiffs, and Frank Katana, Ljubica Katana, Damijan Gruden, Mila Gruden, M.A.K. Shoes Inc., the Katana Family Trust, Snelcrest Gardens Inc., Mellow Gardens Developments Inc. and 797820 Ontario Limited, respondents/defendants

(4 pp.)

[Ed. note: A Corrigendum was released by the Court August 24, 1998 and the correction has been made to the text.]

## **Counsel**

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Robert D. Malen, for the applicants/plaintiffs. Cinda M. Serianni, for the respondent/defendant, the Katana Family Trust. D. Lynn Leniha, for the respondents/defendants, Snelcrest Gardens Inc., Mellow Gardens Developments Inc. and 797820 Ontario Limited.

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### **O'DRISCOLL J. (orally)**

1 The corporate defendants and the Katana Family Trust have filed Notices for Leave to Appeal from the order of Madam Justice Boland, dated February 17, 1998. One Notice is dated June 25, 1998 and the other is dated June 30, 1998.

2 The only basis for attempting to stretch the seven (7) day time period stipulated by Rule 62.02(2) of the Civil Rules of Procedure, within which the Notice of Appeal must be filed, is the argument that the formal order was not entered until June 18, 1998, and that in the interim there was some change to the order of February 17, 1998. There is no evidence filed that the proposed appellants had any intent, real or otherwise, to appeal during the period February 17, 1998 to the end of June 1998. In the face of this state of facts, counsel for the respondents/plaintiffs moves to quash the Notices for Leave to Appeal. The application was made under the provisions of s. 134(3) of the Courts of Justice Act.

**3** In my view, at best, the stalling actions of the proposed appellants since February 17, 1998 are outrageous and at worst smack of an abuse of process. In answer to the motions to quash, the proposed appellants have filed no material. There is no explanation about anything. In my view, if left unquelled, the conduct of these appellants would replace our rules of court with anarchy. Orders to go quashing the two impugned Notices of Appeal for Leave to Appeal.

**4** Costs of these motions are fixed in the total amount of \$2,000 payable forthwith, on a joint and several basis, by these applicants/defendants to the plaintiffs.

O'DRISCOLL J.