

2019 CarswellOnt 2934
Ontario Superior Court of Justice

Bartlett v. Wellwood

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Bartlett v. Wellwood

M. Gibson J.

Judgment: February 27, 2019
Docket: Milton 96/17

Counsel: G. Marsden, for Plaintiff
I. Sfranciog, Banarjee, for Defendants

Subject: Civil Practice and Procedure

Headnote

Civil practice and procedure

M. Gibson J.:

1 The Defendants Jeffrey Wellwood and Tammy-Lynn Wellwood seek leave to issue a Third Party Claim against the proposed Third Party, Dylan Kegare.

2 The action arises out of a motor vehicle accident that allegedly occurred on November 4, 2015, on the Queen Elizabeth Way in Hamilton, Ontario.

3 The Plaintiff issued a Statement of Claim on January 12, 2017, The Defendants served a Statement of Defence and Jury Notice on May 3, 2017. Examinations for Discovery took place on March 14, 2018 and March 21, 2018.

4 The proposed Third Party was allegedly involved in a second accident with the Plaintiff on June 24, 2016 in Hamilton.

5 The plaintiff did not commence a tort action in respect of the second accident. Counsel submits that this was because his claim for general damages for injuries sustained in the second accident will not exceed the statutory deductible.

6 The limitation period expired for commencing a tort action in respect of the second accident on June 24, 2018. He did, however, make a claim for accident benefits in respect of the second accident.

7 Rule 29.02(1.2) of the *Rules of Civil Procedure* provides:

A third party claim may be issued at any time with the plaintiffs consent or with leave, which the court shall grant unless the plaintiff would be prejudiced thereby.

8 The defendants submit that there is no prejudice in this case, and that there will be no delay to this action if the Court grants the Defendants leave to issue a third party claim.

9 The plaintiff Adam Bartlett, responding party on this motion, opposes granting leave for the Defendants to issue a third party claim as against Dylan Kegare. He submits that the steps of this action have been completed, the Trial Record has been delivered, and the parties are scheduled to attend Civil Assignment Court on May 13, 2019.

10 The plaintiff submits that he will be prejudiced by a second examination for discovery, the delay of the trial in this action, and the possible application of a second deductible. The plaintiff submits that such prejudice would outweigh any unfairness in requiring the Defendants to pursue a separate action rather than a third party claim.

11 The test for granting leave to issue such a claim after ten days following the close of pleadings was succinctly summarized by Price J. at para. 36 in *Farell v. Costco Wholesale*, 2015 ONSC 7783.

12 If the granting of leave will prejudice the plaintiff, then the court must exercise its discretion as to whether to do so. With regard to all the circumstances, the court must weigh the prejudice that granting leave would cause the plaintiff against any unfairness in requiring the defendant to commence a separate action, such as the desirability of having the main action and the third party claim determined at the same trial.

13 In the present case, issuing the third party claim will prejudice the Plaintiff within the meaning of Rule 29.02(1.2), because of the need for a second examination for discovery, and the likelihood of an additional set of independent medical examinations. There is a substantial likelihood of significant delay. Moreover, the Trial Record has been delivered and the parties are scheduled to attend Assignment Court.

14 The factors in this case closely parallel those which led Price J. to make his determination in *Farell*.

15 I would echo his determination in respect of the present case that additional delay, after the action has almost run its course, would likely substantially delay the ultimate determination of liability and Mr. Bartlett’s entitlement to compensation.

16 On the other hand, the risk of any unfairness to the Defendants in commencing a separate action is minimal. There is little risk of an inconsistent verdict between this action and a separate action. The trial of this action would only result in the court making findings in respect of liability and damages for the first accident.

17 I find that granting the Defendants leave to issue a third party claim at this stage of the action would prejudice the plaintiff Mr. Bartlett and that, in the exercise of the Court’s discretion, leave should not be granted.

18 Accordingly, the Defendants’ motion is dismissed.

19 The Defendants shall pay costs to the Plaintiff on the motion fixed at \$2500.00

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