

2018 CarswellOnt 16595
Ontario Superior Court of Justice

Nixon v. Avery

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Nixon et al., Plaintiffs and Avery et al., Defendant

Bale J.

Judgment: October 4, 2018
Docket: Oshawa 85467/13 A1, A2, A3

Counsel: R. Donald Rollo, for Scott and Marlene Avery

Subject: Civil Practice and Procedure

Headnote

Civil practice and procedure

Bale J.:

1 Don Rollo and Beau Chapman for moving parties, the Avery Defendants Gord Marsden for the responding parties, the Plaintiffs Harvey Klein for the third parties Renée Kopp, former counsel for O'Tooles.

2 A settlement has been reached between the plaintiffs and the defendants O'Tooles and Leisure Bowling Lanes. The Avery defendants object to the non-monetary terms of the agreement, and ask me to find that it is invalid. In particular they argue that a claim for contribution and indemnity in a personal injury action cannot be assigned. In this case, the settling defendants have assigned their claims for contribution and indemnity to the plaintiffs. I disagree.

3 The claims for contribution and indemnity are not personal injury claims. They are claims that will arise only after a finding that the plaintiffs are entitled to damages from the defendants. As such, they are claims to allocate responsibility for payment of the plaintiffs damages, and I see no reason why parties cannot enter into agreements such as this one, provided that the agreements are disclosed to the court.

4 Because the plaintiffs and the settling defendants are no longer adverse in interest, the trial judge will have to make rulings with respect to trial procedure, and may have to provide additional instructions to the jury as a result of those rulings. These rulings are within the discretion of the trial judge, and are not for a motion judge to make.

5 The motion is therefore dismissed.

6 The motion was brought in good faith in an effort to simplify the trial. In these circumstances, the costs of this motion will be to the plaintiffs in the cause.

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