

**Royal and Sun Alliance Insurance Co. of Canada v. Corona, [2017] O.J. No. 1215**

Ontario Judgments

Ontario Superior Court of Justice

P.J. Cavanagh J.

March 8, 2017.

Court File No. CV-15-533892

**[2017] O.J. No. 1215**

Between Royal and Sun Alliance Insurance Company of Canada, Plaintiff, and Sergio J. Corona, Defendants

(16 paras.)

## **Counsel**

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For the plaintiff: Angelo Sciacca.

For the defendant: Sam Pitaro.

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### **P.J. CAVANAGH J.**

**1** The plaintiff ("RSA") moves for an order staying the Small Claims Court action bearing court file no. SC-15-6841-00 until the matters in the within action have been disposed of. RSA advised at the hearing of this motion that it withdraws its motion for alternative relief of an order transferring the small claims court action (the "SCC action") to this court.

**2** In the within action, RSA claims damage for breach of contract and/or fraudulent misrepresentation and other causes of action in the amount of \$60,000, together with punitive damages in the amount of \$40,000. These claims arise from a motor vehicle accident that occurred on June 20, 2013 involving a collision between a vehicle operated by Third Party and a vehicle insured by RSA under a policy in which the defendant Corona ("Corona") was the named insured. Corona made a claim for statutory accident benefits and RSA made payments on Corona's behalf. Later, Corona received information that led it to conclude that Corona was not present in the insured vehicle when the accident occurred. After further investigation, RSA advised Corona in January 2015 of the results of its investigation and stopped all statutory accident benefits. RSA demanded the return by Corona of the \$37,080.30 that had been paid. On April 15, 2015, RSA commenced a mediation proceeding with FSCO -- the mediation failed on or about June 15, 2015.

**3** On August 6, 2015 the within action was commenced. On June 17, 2015, just after the unsuccessful mediation; Corona commenced an action in the SCC against the third party driver, Bonilla Larios, as defendant. Corona claims damages as a result of injuries that he says were caused by the accident involving Larios.

4 Therefore, there is an overlapping factual issue that arises in each of the SCC action and the within action; whether Corona was involved in the accident that occurred on June 20, 2013.

5 RSA's action is for an amount that exceeds the jurisdiction of the SCC. Corona does not consent to the transfer of his SCC action to this Court. RSA submits that the SCC action should be stayed. Corona opposes this relief.

6 Section 107 of the *Courts of Justice Act* provides that where two proceedings pending in two different courts have a common question of law or fact, and claim relief arising out of the same transaction or occurrence, an order may be made requiring any of the proceedings to be stayed until determination of any of them. Section 138 of the *Courts of Justice Act* provides that as far as possible, multiplicity of legal proceedings shall be avoided.

7 Section 107(2) provides that a proceeding in Small Claims Court shall not be transferred to the Superior Court of Justice without the consent of the plaintiff, and, as noted, RSA does not seek such a transfer.

8 RSA relies on authority that the court, in exercising its discretion to stay an action on the basis of a multiplicity of proceedings must consider (a) which action was initiated first, (b) where the burden of proof primarily lies, and (c) which proceeding is more comprehensive in scope. RSA submits that other factors such as balance of convenience, diligence on the part of the parties, and cost factors must also be considered.

9 In this case, the defendant in the SCC action has consented to the RSA motion to stay the SCC action; see para. 22 of the affidavit of Maria Baggetta filed on this motion. This means that this defendant, Larios, is willing to have an adjudication of the issues of whether Corona was involved in the accident made by this court in an action in which Larios is not a party. RSA, on the other hand, does not consent to a stay of this action to allow the adjudication of this issue to be made in the SCC action where it is not a party.

10 In my view, consideration of the three factors cited by RSA does not lead to a conclusion that clearly favours a stay of the SCC action. The SCC action was started first, but the RSA action was commenced less than 2 months later. In each action the plaintiff has the burden of proof on a civil standard. The overlapping and common factual issue is the same in each action. In my view, the overriding factor to be considered on this motion is s.138 of the *Courts of Justice Act* -- that as far as possible, a multiplicity of proceedings shall be avoided. This is so for various reasons. The risk of having two courts reach different conclusions on the same factual issue risks bringing the administration of justice into disrepute. There are a number of other reasons including avoiding unnecessary costs.

11 In *Zhang v. 1606238 Ontario Inc.* [2010] O.J. No. 577, Boswell J. relied on the strong policy reasons for avoiding a multiplicity of proceedings that he wrote "carries the day (para 10). In *Huebner v. Direct Digital Industries Ltd.* (1976), 11 O.R. (2d) 372, Goodwin J. wrote that it is trite law that a multiplicity of proceedings is to be avoided "wherever possible."

12 I note that none of the cases cited involved two actions which did not involve the same parties, as is the case here. Nevertheless, in my view, it is possible to avoid a multiplicity of proceedings or at least significantly improve the likelihood that the within issue needs to be adjudicated only once. That is by staying the SCC action pending determination of the within action.

13 Corona submits that he will suffer prejudice through delay of his trial in the SCC action. There very well be some delay but, in my view, any delay is outweighed by the need to try to avoid a multiplicity of proceedings.

14 It is possible that, if the issue is decided in favour of Corona in this court, that Larios, who is not a party, may seek to relitigate this issue in the SCC action. In my view, the fact that Larios is consenting to stay of the SCC action suggests that he is unlikely to do so. In any event, a stay of the SCC action will, in my view, significantly improve the likelihood that the common factual issue will only need to be decided once.

**15** For these reasons, I grant the motion and order that the SCC action be stayed until the matters in the within action have been disposed of.

**16** The plaintiff seeks costs of \$3,249.52 inclusive of fees, disbursements and HST. The defendant opposes any award of costs on the ground that the motion was a close call and is discretionary. In my view, the usual rules should apply and I award costs to the successful party, RSA, on a partial indemnity scale, to be paid forthwith.

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