

**Downsview Place Auto Group Inc. v. Royal and Sun Alliance Insurance Co.
of Canada, [2016] O.J. No. 2749**

Ontario Judgments

Ontario Superior Court of Justice
Small Claims Court - Brampton, Ontario

P. Kaler Deputy J.

Heard: March 29, 2016.

Judgment: April 25, 2016.

Court File No. SC-15-07680-00

[2016] O.J. No. 2749

Between Downsview Place Auto Group Inc., Plaintiff, and Royal and Sun Alliance Insurance Company of Canada,
Defendant

(18 paras.)

Counsel

Representative of the Plaintiff: A. Rabba.

Representative of the Defendant: M. Radulovic -- moving party.

P. KALER DEPUTY J.

1 This is a motion by the Defendant, Royal and Sun Alliance Insurance Company of Canada (hereinafter referred to as "Defendant") for an order dismissing the Plaintiff's (Downsview Place Auto Group Inc. (hereinafter referred to as the "Plaintiff")) on the basis that the action is time barred due to the lapse of the statutory limitation period.

2 The facts are broadly not disputed. The claim arises from the alleged theft of a 2008 BMW 550I which occurred on or about July 24, 2014. The plaintiff had a garage automobile policy of insurance with the Defendant. The plaintiff filed a claim with the defendant in the amount of \$17,840.00. The Defendant denied the claim on the basis that the vehicle was not stolen.

3 The claim was denied by way of a letter dated August 8, 2015. This was after the one year limitation period, and therefore the Defendant advised the Plaintiff that it would waive reliance on the limitation period for a further 90 days in order that the plaintiff may take steps to protect its legal rights.

4 On or about October 22, 2015 (within the 90 days extension) a telephone call took place between the Plaintiff's representative, namely, Shachar Ben-Gal and the Defendant's physical damage adjuster, namely, Shaida Thaver. During this time there was "no discussion" of any further extension or limitation period being "further waived".

5 After the said call Mr. Ben-Gals understanding that the basic two-year limitation period under the *Limitation Act, 2002* applied because (1) the limitation period of one year had already passed and when the Defendant insurer waived reliance upon the one year limitation period date subsequent to the waiver.

6 The Plaintiff commenced the claim on or about November 25, 2015, which was about 18 days after the extension ended.

7 Section 8 of the Ontario Garage Automobile Policy incorporates the mandatory Statutory Conditions prescribed by the *Insurance Act*. Section 9(4) of the Statutory Condition states:

Every action or proceeding against the insurer under this contract in respect of loss or damage to the automobile or its contents shall be commenced within one year next after the happening of the loss and not afterwards, and in respect of loss of damage to persons or other property shall be commenced within two years next after the cause of action arose and not afterwards.

8 Section 259.1 of the *Insurance Act* reads as follows:

A proceeding against an insurer under a contract in respect of loss or damage to an automobile or its contents shall be commenced within one year after the happening of the loss or damage.

9 The *Limitations Act 2002* prescribes a basic two-year limitation period for the commencement of most actions. However, section 19 of the *Limitation Act* preserves the limitation periods as follows:

A limitation period set out in or under another Act that applies to a claim to which this Act applies is of no effect unless (a) the provision establishing it is listed in the Schedule to this Act.

Section 259.1 of the *Insurance Act* is listed as Schedule to this Act.

10 I do not therefore agree with the Plaintiff's position that as the one year period had already passed when the 3 months extension was granted, therefore the 2 year limitation period automatically applied under Section 8 of the Ontario Garage Automobile Policy.

11 Moreover, there was no "meeting of minds" of "consensus ad idem" as it is legally referred to, about a further extension when the call was made on or about October 22, 2015. Had that been the case, clearly the limitation period could have been extended.

12 Having made this finding, the next question is whether I have the jurisdiction to dismiss the Plaintiff's claim at a motion.

13 Section 12.02 of the Rules of the Small Claims Court reads as follows:

- (1) The court may, on motion, strikeout or amend all or part of any document that (a) discloses no reasonable cause of action or defence; (b) may delay or make it difficult to have a fair trial; or (c) is inflammatory, a waste of time, a nuisance or an abuse of court's process.
- (2) In connection with an order striking out or amending a document under subrule (1), the court may do one or more of the following: (1) In the case of a claim, order that the action be stayed or dismissed; (2) in the case of a defence, strike out the defence and grant judgment; (2.1) in the case of a motion, order that the motion be stayed or dismissed; (3) impose such terms as are just.

14 I find that there is no meaningful chance that the plaintiff's claim will succeed at trial in light of the limitation period, therefore I have jurisdiction to grant the relief sought by the Defendant.

15 The only last issue is whether or not I should extent the limitation period. The Court of Appeal in the Joseph v. Paramount Canada's Wonderland conclusively ruled that the doctrine of "special circumstances" has no applicability under the Limitation Act. Justice Feldman stated "*The question to be answered now is whether the legislature intended to preserve the court's common law discretion to extend limitation periods under the new Act by applying the doctrine of special circumstances. As a matter of statutory interpretation, I have concluded that the answer must be no.*"

16 Based on the following the Plaintiff's claim is dismissed.

17 The Plaintiff shall pay to the Defendant costs fixed in the amount of \$150.00 inclusive of disbursements.

18 The Settlement Conference currently scheduled for May 13, 2016 @ 10:00 a.m. in courtroom number H-16 is hereby vacated.

P. KALER DEPUTY J.