

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Thomas Elliott et. al. v. Michelle Brown et. al.

**BEFORE:** MASTER MACLEOD

**COUNSEL:** Patrick O'Hagan for the plaintiff

Mauro D'Agostino for Unifund

**ENDORSEMENT**

[1] This action was commenced in Toronto and named Toronto as the place of trial. The plaintiffs reside in Newmarket and Bradford. The defendant Brown, who did not defend and has been noted in default resides or resided in Nestleton, Ontario. The defendant Unifund has its office in Richmond Hill. The accident took place in Durham Region and was investigated by the Durham Regional Police.

[2] The action has proceeded in Toronto and a trial date has now been set. Unfortunately, due to the current state of the long trial list in Toronto, the trial date is not until February 2007. The plaintiff moves to change the venue of trial to Newmarket. This is opposed by Unifund.

[3] The plaintiff brings the motion under Rule 13.1.02 which is a new rule that came into force in July. Specifically the plaintiff refers to the factors set out in subrule (2). Technically that subrule does not apply to this case because the action was commenced before July 2004. The subrule that does apply is the transitional provision in subrule (11). Under the transitional provisions, balance of convenience and fair trial are the tests whereas under the new subrule (2) there are a number of specific factors to be considered. It is clear that the real reason for this motion has little to do with convenience in the sense of geographical convenience but rather has to do with trial scheduling.

[4] The new subrule (2) provides that a change in venue may be granted if *inter alia* the matter may be more expeditiously determined in the other location. That subrule is part of a new venue regime that replaces the previous situation in which a plaintiff could commence an action in any court office and name any judicial centre ("county" in the rules) in Ontario as the place of trial. Under the new regime the action is to be commenced in the judicial centre in which it will be tried and the court file will be moved along with the place of trial if there is a change in venue. Motions are now all to be heard in the place of trial – where the court file is located - and not where the other lawyer practices as was formerly the case.

[5] While it is true that the new subrule 13.1.02 (2) (vii) makes the “advantages or disadvantages of a particular place with respect to securing the just most expeditious and least expensive determination of the proceeding on its merits” a factor in changing the place of trial, there are other factors listed in the rule which include the traditional tests for changes in venue and also “whether judges and court facilities are available in the other county”.

[6] In future I think more is required than simply reciting that “I am advised the Newmarket court is available to hear long civil trials as early as October of 2004 or April of 2005”. Counsel proposing a move to another judicial centre in another region because of the availability of trial dates must make specific inquiries with the trial co-ordinator in that centre concerning the process necessary to get the action on the trial list, the current state of the lists and the impact of transferring the trial to the other centre. This will be particularly important with long trials or for that matter any trial that may make extraordinary demands on the resources of the court. Because of the impact of long trials on the lists and on the scheduling of judges, the Regional Senior Justice in each region typically has special arrangements in place for scheduling of such trials. In the case of trials that will make extraordinary demands, it may be necessary to have approval from the Regional Senior Judge in the receiving region. This action is not so extraordinary as the length of trial is estimated at 15 days.

[7] I have nevertheless spoken with Regional Senior Justice Shaughnessy. There is no doubt Central East Region can absorb this trial but obviously a flood of long trials transferred from Toronto could quickly cause chaos in the surrounding centres. What is troubling in this case is that counsel waited until after a trial date was secured in Toronto to bring this motion. On the other hand this action never had any connection with Toronto and should properly be tried in Central East Region where most of the witnesses reside. The objections of Unifund are unfounded as its own office is in York Region and if defence medical examinations are arranged with Toronto physicians in face of this motion, that is a problem of the defendant’s making.

[8] The order is therefore granted and the place of trial transferred to Newmarket from Toronto. The Toronto trial date is vacated as is the settlement conference date. The plaintiff is immediately to set the matter down in Newmarket and to contact the trial co-ordinator with respect to obtaining a date for pre-trial and trial. It may be necessary to attend a regional trial scheduling court. Rule 77 ceases to apply except for the purpose of a motion that is presently scheduled before me.

[9] This is not an appropriate case for costs. The defendant resisted the motion but it was the plaintiff who commenced the action in Toronto and named Toronto as the place of trial. Further, the plaintiff obtained a trial date in Toronto and occupied space on an already clogged trial list before bringing this motion.

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**DATE:** November 19, 2004