CITATION: Reeve v. Pembridge Insurance Company 2011 ONSC 5471
COURT FILE NO.: CV-08-7453
DATE: 2011-09-26

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:	)	
	)	
CAROL REEVE	)	Ms. Jane Paproski, for the Plaintiff
	)	
Plaintiff	)	
	)	
- and -	)	
	)	
PEMBRIDGE INSURANCE COMPANY	)	Mr. Ryan Kirshenblatt, for the Defendant
	)	
Defendant	)	
	)	
	)	**HEARD:** August 3, 2011

Parayeski, J.

[1] The plaintiff seeks leave to appeal a decision of Taylor J. made on May 3rd, 2011. Briefly, that decision granted a motion brought by the defendant and required that the plaintiff's tort action and accident benefits action, both relating to injuries allegedly sustained in a single motor vehicle accident, be tried together.

[2] *Rule* 62.02 of the *Rules of Civil Procedure* stipulates that leave should not be granted unless:

a) There is a conflicting decision by another or court in Ontario or elsewhere on the matter involved in the proposed appeal and it is, in the opinion of the judge hearing the motion, desirable that leave to appeal be granted; or

b) There appears to the judge hearing the motion good reason to doubt the correctness of the order in question and the proposed appeal involves matters of such importance that, in his or her opinion, leave to appeal should be granted.

[3] The onus is upon the party seeking leave to convince me that either set of criteria is met. It is apparent from the wording of the *Rule* that I am given a considerable amount of discretion in respect of the issue of granting or denying leave. Similarly, *Rule* 6.01, under which Taylor J. made his decision, is one that contemplates the exercise of wide discretion, obviously within the factors set out in that *Rule.*

[4] I am of the view that the plaintiff has not met the onus upon her in the circumstances of this case. I shall deal with each set of criteria separately.

[5] In his endorsement, Taylor J. states that there are conflicting decisions on whether, as a general rule, tort and accident benefits actions should be tried together. To be sure, there are some decisions that require trials together and some that don't. With respect to Taylor J.'s phraseology, I am not convinced that this fact necessarily constitutes the existence of conflicting decisions as required by the first set of criteria under *Rule* 62.02. That different judges have exercised the broad discretion given to them and come to different conclusions does not necessarily mean that there "conflicting" decisions. Even if I am wrong in this regard, I am not persuaded that it is desirable to ask the Divisional Court to rule upon the underlying issue of trials together in similar cases. Given the discretionary nature of *Rule* 6.01, I fail to see how much meaningful direction can come from any pronouncement at that level.

[6] On the second set of criteria, I am not at all of the view that there is good reason to doubt the correctness of Taylor J.'s decision. He exercised his discretion within the parameters of the *Rule*. He considered that both claims arose from injuries allegedly sustained in a single motor vehicle accident. He considered that there are indeed common questions of fact involved, and he considered the waste of judicial resources involved in having separate trials. I have no doubt that he also considered the avoidance of potentially inconsistent verdicts should these actions proceed separately.

[7] I do not consider the issue of trials together in similar circumstances to be of such general importance that a higher court should be called upon to rule on the subject. I repeat my respectful opinion on the practical effect of such a ruling in any event.

[8] I am not unmindful of the plaintiff's position that the tort action arises out of a motor vehicle accident and the accident benefits action arises out of an alleged breach of contract by the provider of accident benefits coverage. While that is a kind of distinction, is it one without a great deal of meaningful difference, in my opinion. The alleged injuries are at the root of both claims. A judge sitting alone, or a properly instructed jury, is quite capable of dealing with both negligence and contract issues.

[9] The fact that the two actions are not at the same stage of proceeding does not militate, in my view, in favour of keeping them separate. The less advanced one can easily be "caught up" with minimal effort on the part of counsel. In any event, no adequate explanation for the difference has been provided.

[10] Lastly, I reject the plaintiff's suggestion that trials together would create insurmountable unfairness. A trial judge has a duty to ensure fairness, and if that includes balancing such things as expert reports, I have no doubt that such can and would be done.

[11] The plaintiff's motion for leave to appeal is dismissed. If the parties cannot agree upon costs of this motion, they may make brief, written submissions in that regard. Each set of submissions should not exceed 3 type-written pages in total, excluding any costs outline. The successful defendant has until October 15th, 2011 to make its costs submissions. The plaintiff has a further 21 days to respond. The costs submissions, if any, should be forwarded to my attention at the John Sopinka court house in Hamilton.

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Parayeski, J.

Released: September 26, 2011

COURT FILE NO.: CV-08-7453
DATE: 2011-09-26

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

CAROL REEVE

Plaintiff

- and –

PEMBRIDGE INSURANCE COMPANY

Defendant

REASONS FOR JUDGMENT

Parayeski, J.

Released: September 26, 2011