

CITATION: Sivarajah v. Andrikopoulos, 2020 ONSC 2667

COURT FILE NO.: CV-18-601289

CV-17-572437

CV-18-590380

CV-17-588944

CV-17-585131

DATE: 20200429

SUPERIOR COURT OF JUSTICE - ONTARIO

RE:

Court File No.: CV-18-601289

Thengavi Sivarajah, Plaintiff

AND:

Nicolaos Andrikopoulos, 9016457 Canada Corporation, Keerthan Mangaleswaran, Enterprise Rent-A-Car Canada, Defendants

and Re:

Court File No.: CV-17-572437

Nicolaos Andrikopoulos, Plaintiff

AND:

Keerthan Mangaleswaran, Enterprise Rent-A-Car Canada Company /LA Compagnie De Location D'Autos Enterprise Canada and Unica Insurance Inc., Defendants

AND:

ACE INA Insurance/Assurance ACE INA, added by an order pursuant to section 258(14) of the Insurance Act, R.S. O. 1990, c. I.8, Third Party

and Re:

Court File No.: CV-18-590380

Nicolaos Andrikopoulos and 9016457 Canada Corporation, Plaintiffs

AND:

Hub International Sinclair Cockburn Ltd., Jose Montano, Vivian Goudogianis and UNICA Insurance Inc., Defendants

and Re:

Court File No.: CV-17-588944

Denoshia Anton, Plaintiff

AND:

Keerthan Mangaleswaran, Enterprise Rent-A-Car Canada Company/ LA
Compagnie De Location D'Autos Enterprise Canada, Nicholas Andrikopoulos,
9016457 Canada Corporation, Tawhidullah Rashid, Allstate Insurance Company,
Defendants

AND:

ACE INA Insurance/Assurance ACE Inc, added by an Order Pursuant to Section
258(14) of the Insurance Act, R.S.O. 1990, c. I.8. Unica Insurance Inc., Third
Party

and Re:

Court File No.: CV-17-585131

Tawhidullah Bin Rashid, Plaintiff

AND:

Nicolaos Andrikopoulos, 9016457 Canada Corporation, Keerthan
Mandaleswaran, Enterprise Rent-A-Car Company, Aviva Insurance Company of
Canada, Defendants

AND:

ACE INA INSURANCE/ASSURANCE ACE INA, added by an Order pursuant
to section 258(14) of the Insurance Act, R.S.O. 1990, c. I.8, Third Party

BEFORE: D. A. Wilson J.

COUNSEL: *M. Alam*, for the Plaintiff Sivarajah

Andrew Yolles and Heidi Brown, for the Defendants/Plaintiffs Andrikopoulos and
9016457 Canada Corporation

Timothy Alexander, for the Defendant Enterprise Rent-A-Car Canada

Murray Stieber, for the Defendant/Third Party HUB International Sinclair
Cockburn Ltd., Jose Montano and Vivian Goudogianis

Jae Sung Hong, for the Defendant UNICA Insurance Inc.

Bill Denstedt, for the Plaintiff/Defendant Rashid

R. Akilian, for plaintiff Anton

HEARD: 27 April 2020

ENDORSEMENT

[1] I am case managing these 5 actions arising from a motor vehicle accident that occurred January 23, 2016. Three Plaintiffs assert claims for personal injuries and there are insurance issues as well.

[2] In my endorsements dated July 11, 2019 and November 13, 2019, I made orders concerning the timing for delivery of expert reports. Specifically, I ordered that defence medical examinations were to be completed by March 31, 2020, since a mediation had been arranged on consent for May 14, 2020.

[3] I received a request for an urgent case conference, which I convened. I was advised by Mr. Alexander, counsel for the Defendant Enterprise Rent-A-Car Canada, that he had arranged a vocational assessment of the Plaintiff Anton for March 2020. Unfortunately, because of COVID19, any assessment would have to be done virtually and the assessor he had selected did not wish to proceed with anything other than an in-person assessment.

[4] Furthermore, Mr. Alexander advised that his client did not wish to proceed with the mediation scheduled for May 14 since it would be done on Zoom. He wished to reschedule the mediation until the fall, to enable the vocational assessment to be completed and the mediation to be done in person.

[5] All other counsel wished to proceed with the schedule mediation on May 14, 2020 through Zoom.

[6] These are unusual and unprecedented times. Pursuant to the Notice to Profession dated March 15, 2020, the court has suspended regular operations and is working remotely. While trials have been adjourned, the court is conducting pretrial conferences and other matters by teleconference or by Zoom.

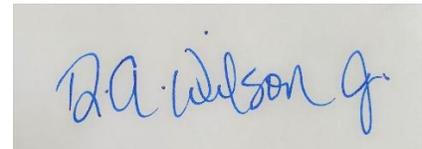
[7] The refusal of the vocational assessor to conduct the assessment of the Plaintiff Anton virtually is unreasonable, in my view. I was not provided with any evidence from the expert to support his view. A vocational assessment is different than a neuropsychological assessment which requires the Plaintiff to submit to testing over a lengthy period of time. The purpose of a vocational assessment is to comment on a Plaintiff's ability to return to work and in what capacity and to provide occupations that might be suitable if the Plaintiff cannot return to his or her pre-accident work.

[8] In my view, if the Defendant Enterprise wishes to have an opinion on the vocational issue in these lawsuits, an assessment can be done virtually and if the case does not resolve and proceeds to trial, an in-person assessment can be conducted, and the expert can deliver a supplementary report. It strikes me as preferable to have some opinion on the vocational issue for use at the mediation. Of course, if the Defendant Enterprise chooses not to have such a report, that is their decision, but it is not a reason to cancel a mediation that has been scheduled for many months.

[9] Similarly, the preference of Enterprise to attend a mediation in person as opposed to by Zoom is understandable. However, it is unclear at the present time when mediations and other conferences associated with litigation will resume in person. As my colleague Justice Corbett observed in *Association of Professional Engineers v. Rew*, 2020 ONSC 2589, “The court is faced with an unprecedented challenge maintaining the institutions essential for the continuation of the Rule of Law in the face of the COVID-19 crisis, and recourse to electronic hearings is a key aspect of the court’s response.” For the same reasons, proceeding with examinations for discovery and mediations virtually is necessary at this moment in time.

[10] I make the following orders: the mediation set for May 14, 2020 is to proceed, with all parties attending in good faith in an attempt to resolve these actions. If Enterprise decides to proceed with a defence vocational assessment for use at the mediation, the Plaintiff Anton shall cooperate in participating and if the action does not settle and COVID-19 restrictions are lifted and a request is made by Enterprise for an in-person assessment, the Plaintiff shall attend and a supplementary report may be delivered.

[11] This order is effective immediately.

A rectangular box containing a handwritten signature in blue ink that reads "D.A. Wilson J.".

Darla A. Wilson J.

Date: April 29, 2020