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Djurasevic v. Waterloo Insurance Co.

Between
Franjo Djurasevic, Plaintiff, and
Waterloo Insurance Company, Defendant

[1991] O.J. No. 755

Action No. 14616/90

Ontario Court of Justice - General Division
Brampton, Ontario

Dunn J.

May 1, 1991

(3 pp.)

Stephen D. Braithwaite, for the Plaintiff.
David Zarek, for the Defendant.

DUNN J.:-- This motion was brought before me on April 30, 1991 for an order dismissing the plaintiff's action on the basis that the plaintiff's claim was statute barred. From the materials filed, it appears that the claim of the plaintiff is on an insurance policy which covered a loss to the plaintiff's automobile. On or about July 14, 1985, the plaintiff's automobile was stolen in the State of New York. The applicant relies on the provisions of the Insurance Act which provides a one year limitation period for the commencement of any action with respect to loss or damage. (S. 206(3) of the Insurance Act R.S.O. 1980).

The plaintiff's reply to the defendant's statement of defence states that the defendant's representative waived the limitation period with respect to the matter. This motion was then brought by the applicant/defendant requesting that the plaintiff's action be dismissed. The solicitor for the applicant

points out that the action was not commenced until the issue of the statement of claim March 29, 1990, over four and one half years after the alleged loss, and further points out that the alleged waiver of the limitation period was by a telephone conversation on August 13, 1986, approximately one month after the expiry of the limitation date.

I have read the case of *Gillis v. Bourgard et al.* (1981) 129 D.L.R. (3d) at 342. it would appear that that case may still enunciate the principles of promissory estoppel, even though the case was over-turned on appeal to the Ontario Court of Appeal.

In the case before me today, the respondent/plaintiff alleges that the defendant accepted liability for the loss and that "protected negotiations" were conducted. There is slim evidence before me of "protected negotiations". There may however be sufficient evidence if produced by the plaintiff at a trial of this issue to result in a conclusion that the actions of the applicant/respondent were such as to result in a promise to the plaintiff not to hold him to the Statute of Limitations and a reliance of the plaintiff on that "promise".

There is, therefore, in my mind a question as to whether or not the Limitations Act applies to this matter, to sufficient require that the matter be tried. I therefore dismiss the motion. I make no order as to costs, but reserve them to the discretion of the trial judge.

DUNN J.