CITATION: Bonilla v. Preszler et al, 2016 ONSC 4109
COURT FILE NO.: CV-08-368490
DATE: 20160622

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
GLENDA BONILLA	)	*Kevin Doan*, for the Plaintiff
	)	
Plaintiff	)	
	)	
	)	
– and –	)	
	)	
ROBERT PHILIP PRESZLER, PRESZLER LAW FIRM and THE PERSONAL INSURANCE COMPANY OF CANADA	)	*Eric K. Grossman*, for the Defendant, The Personal Insurance Company of Canada
	)	
	)	
Defendants	)	
	)	
	)	
	)	
	)	
	)	**HEARD: June 21, 2016**

CASE CONFERENCE ENDORSEMENT

DIAMOND J.:

[1] On February 24, 2016, I heard a motion brought by the defendant, The Personal Insurance Company of Canada ("Personal") seeking an order granting summary judgment and dismissing the plaintiff's action "with respect to the issue of Income Replacement Benefits" ("IRBs") as against Personal.

[2] At the outset of the hearing of that motion, counsel for Personal advised that depending upon my ultimate disposition of the motion, Personal would likely be seeking additional relief by way of a "supplementary motion". In other words, if Personal was successful on its motion for summary judgment, it would subsequently seek order dismissing the balance of the plaintiff's action.

[3] By Reasons for Decision released on February 29, 2016, I granted Personal's motion and dismissed the plaintiff's action with respect to the issue of IRBs. At paragraph 51 of those Reasons, I stated as follows:

> "I leave it to the parties to determine whether such a finding disposes of the entire action against Personal, or whether Personal wishes to proceed with a further motion for summary judgment seeking an order dismissing the balance of the plaintiff's claim against it (if such a balance exists)."

[4] I understand that the plaintiff has appealed my original decision, and that the appeal is currently scheduled to be argued sometime in October 2016.

[5] Counsel for Personal has now (a) confirmed that his client does wish to proceed with a further motion seeking an order dismissing the balance of the plaintiff's action, and (b) requested that I hear that further motion since I heard Personal's original motion, and am familiar with the issues and evidence raised therein.

[6] Counsel for the plaintiff opposes Personal's request that I hear Personal's further motion, taking the primary position that the relief being claimed is not appropriate for disposition by way of summary judgment. In addition, counsel for the plaintiff submits that "the main, if not only, reason Personal is moving on the balance of the relief is as a result of having known who the motion judge will be and the favourable result it has achieved on the limitation issue before the same motion judge."

[7] A telephone case conference was held on June 21, 2016 to address these issues.

[8] To begin, I do not find that I am mandated by the principles set out by the Supreme Court of Canada in *Hryniak v. Mauldin* 2014 SCC 7 to seize myself of Personal's further motion. My colleague Justice Myers summarized the *Hryniak* roadmap as follows:

> "Under the roadmap provided starting at para. 66 of *Hryniak* the Court is to consider first whether the motion provides sufficient evidence required to fairly and justly adjudicate the dispute and is a timely, affordable and proportionate procedure. If not, the Court should consider if it can reach the required result (to fairly and justly adjudicate the dispute in a timely, affordable and proportionate procedure) by exercising the discretion to weigh evidence, evaluate credibility of witnesses and drawing reasonable inferences from the evidence now rather than at trial (*Hryniak*, at para. 67). If that does not provide the requisite degree of assurance, the Court should consider exercising the discretion to order presentation of some limited oral evidence (*Hryniak*, at para 68). If even a mini-trial will not provide a fair and just adjudication of the dispute in a timely, affordable and proportionate procedure, then the motion should be dismissed but the judge is required to craft a trial process to do so while remaining seized of the matter (*Hryniak*, at para 77). The last fallback is to simply dismiss the motion in exceptional cases where it is clearly inappropriate either to grant summary judgment (*Hryniak*, at para. 68) or to remain seized (*Hryniak*, at para. 78)."

[9] The relief now sought by Personal was not part and parcel of its initial motion before me, but was described in passing as a potential "next step" depending upon my disposition of Personal's original motion. The obligation upon a motion judge to "craft a trial process while remaining seized of the matter" arises when motions for summary judgment are dismissed, not granted. That of course did not happen here.

[10] Personal effectively chose to bifurcate one larger motion into two stages. In my view, that in and of itself does not mandate me to hear the second motion. While I can appreciate Personal's request that I do so given that I heard its original motion, I see no reason why that second motion cannot proceed before another judge of this court.

[11] That said, as canvassed with counsel during the telephone case conference, I am prepared to case manage Personal's second motion as I understand there are some interim issues to be determined prior to the motion being scheduled, including (a) whether Personal's second motion ought to proceed as a summary judgment motion and (b) the nature and extent of the plaintiff's ability to respond to the second motion.

[12] To that end, counsel may contact my assistant Michelle Giordano at michelle.giordano@ontario.ca to arrange the next case conference for the purpose of addressing such interim steps, and, if appropriate, scheduling a return date for Personal's second motion.

Diamond J.

Released: June 22, 2016

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BETWEEN:

GLENDA BONILLA

Plaintiff

– and –

ROBERT PHILIP PRESZLER, PRESZLER LAW FIRM and THE PERSONAL INSURANCE COMPANY OF CANADA

Defendants

CASE CONFERENCE ENDORSEMENT

Diamond J.

Released: June 22, 2016