

CITATION: Nwokomah v. Galle, 2017 ONSC 6880
COURT FILE NO.: CV-14-2868-00
DATE: 2017 11 22

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: MICHAEL IFEDIORA NWOKOMAH, Plaintiff

and

ROSEANNE GALLE, PALWINDER SINGH KOONER and
INDERJIT KOONER, Responding Defendants

BEFORE: McSWEENEY J

COUNSEL: Moussa Sabzehgtabaei, for the Plaintiff

Brian M. Yung, for the Responding Defendants, Palwinder Singh
Kooner and Inderjit Kooner

HEARD: November 20, 2017

ENDORSEMENT

[1] The Plaintiff in this motor vehicle accident action brings a motion pursuant to Rule 21 and 22 of the *Rules of Civil Procedure*.

[2] Rule 21 provides for the determination before trial of a question of law raised by a pleading, the resolution of which may narrow or shorten the issues at, or length of, a trial. Rule 22 permits a question to be put to the court for determination as a “special case” where both parties concur.

[3] The Plaintiff seeks “the opinion of the Court as it relates to interpretation of Section 267.5 of the *Insurance Act*.” Specifically, I am asked by the Plaintiff to interpret the phrase “without regard to” in s. 267.5(7)(1) of that *Act*. The Plaintiff asks that I make an order that binds the trial judge by requiring him or her to tell the jury about the deductibles which apply to general damages awards in actions arising from motor vehicle accidents.

[4] The Plaintiff concedes that the court on this motion is not required to determine the requested issue before trial, but has discretion to do so.

[5] The responding Defendants seek an adjournment of the motion as they have not had sufficient time to prepare responding materials. On the motion itself, they argue that the motion should be dismissed as it is not properly a Rule 21 or Rule 22 motion.

[6] On his motion, the Plaintiff relies on publicly available materials including those which would be characterized as “legislative facts”. Plaintiff’s counsel was candid that the position he advances is also the position of “the plaintiff bar”; namely, that unless civil juries are told about the legislated deductible (of approximately \$37,000) under the *Insurance Act*, they will not know that any

award of general damages, in an amount less than that, will result in no collectible judgment for a plaintiff.

[7] The motion is dismissed. This Court has no jurisdiction to entertain the motion as framed.

[8] Specifically, the motion is not properly constituted under Rule 21 as the issue of the jury's knowledge of deductibles is not a matter of law, contained in the pleadings, the resolution of which would dispose of all or part of the action, substantially shorten the trial or result in substantial cost savings for the parties or the public.

[9] Likewise, the motion is not properly constituted under Rule 22. There is no agreement between the parties as to a stated case or question to be posed to the Court. Further, that question, even if agreed upon as suggested by the Plaintiff, would not dispose of all or part of the action, substantially shorten the trial or result in substantial cost savings for the parties or the public.

ORDER:

[10] For the foregoing reasons, the Plaintiff's motion is dismissed with costs. The responding Defendants' motion for an adjournment is dismissed.

[11] Cost submissions were heard, and cost outlines reviewed. Responding Defendants' costs are reasonable. The Plaintiff will pay partial indemnity costs, in the amount of \$3,583.38, to the responding Defendants within 30 days.

McSweeney, J

DATE: November 22, 2017

CITATION: Nwokomah v. Galle, 2017 ONSC 6880
COURT FILE NO.: CV-14-2868-00
DATE: 2017 11 22

**SUPERIOR COURT OF JUSTICE
ONTARIO**

RE: MICHAEL IFEDIORA
NWOKOMAH
Plaintiff

and

ROSEANNE GALLE,
PALWINDER SINGH
KOONER and INDERJIT
KOONER

Respondents

BEFORE: McSweeney, J.

COUNSEL: Moussa Sabzehgtabaei, for
the Plaintiff

Brian M. Yung, for the
Defendants, Palwinder Singh
Kooner and Inderjit Kooner

ENDORSEMENT

McSweeney, J.

DATE: November 22, 2017