

Decisions of the Court of Appeal

Natario v. RBC Insurance Company of Canada

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Judges: Paciocco, David M.; Thorburn, Julie; Dawe, Jonathan

Subject: Civil

COURT OF APPEAL FOR ONTARIO

CITATION: Natario v. RBC Insurance Company of Canada, 2026 ONCA 263

DATE: 20260410

DOCKET: M56681 (COA-25-CV-1680)

Paciocco, Thorburn and Dawe JJ.A.

BETWEEN

Maria Natario

Plaintiff (Respondent/Moving Party)

and

RBC Insurance Company of Canada, Aviva Insurance Company of Canada, Kevin David
Sherkin and John Doe(s)

Defendants (Appellants/Responding Parties)

Michael Rotondo, for the respondent/moving party, Maria Natario

David Zarek and Alexander S. Reyes, for the appellants/responding parties, RBC Insurance
Company of Canada and Aviva Insurance Company of Canada

Heard: April 7, 2026

REASONS FOR DECISION

[1] The moving party/plaintiff, Maria Natario brings this motion to quash the appeal of the motion judge's order. The motion judge denied the responding parties to this motion, Aviva Insurance Company of Canada and RBC Insurance Company of Canada (together, "the insurers"), leave to amend their pleading to include the defence of civil fraud.

[2] The moving party claims that the order is interlocutory and can only be appealed to the Divisional Court with leave pursuant to s. 19(1)(b) of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43. She claims that the order does not finally resolve all or part of the dispute between the parties; it only changes the "labelling" or format by which the substantive issues in the case will be decided.

[3] The insurers submit that the motion should be denied because the order forecloses their ability to advance civil fraud as a distinct defence. They therefore take the position that the order is final and that this court, not the Divisional Court, has jurisdiction to hear the appeal and determine whether the civil fraud defence should be permitted to proceed.

[4] It is agreed that if the motion judge's order is final, the appeal is properly before this court; and if it is interlocutory, the quash motion should be allowed and the matter remitted to the Divisional Court.

[5] In our view, the denial of the insurers' motion for leave to amend their pleadings to add civil fraud is a final order.

[6] After the hearing, we dismissed the motion with reasons to follow. These are those reasons.

BACKGROUND

[7] In 2012, the moving party suffered grievous permanent injuries after falling through a hole in the attic of her friends' ("the insureds") home. She was rendered paraplegic. She commenced an action against the insureds and RBC Insurance, which had issued a home

insurance policy. Aviva acquired RBC Insurance and assumed the responsibilities of insurer under the policy in 2016.

[8] The moving party initially claimed that she fell down the stairs after tripping over construction debris, but in 2015, amended her claim to plead that she fell through an opening or unstable floorboards in the attic. The motion judge noted that her initial pleading and subsequent correction were likely the result of her inability to communicate in English.

[9] It is common ground that for seven years, the insureds maintained that the moving party slipped on debris while going down a staircase in their home although this was not true. They denied that she fell through the floor in the attic, fearing legal consequences because they were undertaking renovations in the attic without a building permit.

[10] In 2019, the insureds admitted that their evidence at examinations for discovery was fabricated.

[11] The insurers took the position that the insureds' misrepresentation constituted a material breach of the policy and refused to indemnify them. However, the insurers continued to defend the action to minimize any judgment. In 2021, the action was dismissed on consent, without costs. The consent order provided that the moving party would sign a full and final release in favour of the insureds but reserve her right to commence an action against the insurers pursuant to s. 132 of the *Insurance Act*, R.S.O. 1990, c. I.8. The consent order stipulated that she would not be required to prove damages (up to the policy limit of \$2 million) in the new proceeding against the insurers.

[12] In February 2022, the moving party issued a Statement of Claim against the insurers pursuant to s. 132(1) of the *Insurance Act*, seeking damages in the amount of \$2 million.

[13] In December 2024, this court rendered its decision in *Wong v. Aviva Insurance Company of Canada*, 2024 ONCA 874, clarifying the availability of the defence of civil fraud to an insurer in a coverage action. The insurer in that case declined to indemnify the defendants in an action for damages arising from a motor vehicle collision because of material

misrepresentations made by the defendants in examinations for discovery. The trial judge found that the elements of civil fraud were met in the circumstances and the insurer was not responsible for coverage.

[14] In September 2025, the insurers brought this motion for leave to the Superior Court to amend their Statement of Defence to add the defence of civil fraud. The insurers based their proposed amendment on the insureds' false statements and the material facts already pleaded. On December 10, 2025, the motion judge dismissed the insurers' motion for leave to amend the pleadings on the basis that to do so, would cause non-compensable prejudice to the plaintiff.

ANALYSIS OF THE ISSUE

[15] The test for determining whether an order is final or interlocutory, is set out in *Hendrickson v. Kallio*, [1932] O.R. 675 (C.A.), at p. 678, as follows:

[An] interlocutory order from which there is no appeal is an order which does not determine the real matter in dispute between the parties -- the very subject matter of the litigation, but only some matter collateral. It may be final in the sense that it determines the very question raised by the applications, but it is interlocutory if the merits of the case remain to be determined.

[16] It is settled law that an order refusing leave to amend a pleading to advance a new substantive claim or defence is a final order: *Horani v. Manulife Financial Corporation*, 2023 ONCA 51, at para. 12. See also: *385925 Ontario Ltd. v. American Life Insurance* (1985), 51 O.R. (2d) 382 (H.C.) and *Ontario (Securities Commission) v. McLaughlin*, 2009 ONCA 280, 248 O.A.C. 54, at para. 7.

[17] An order that conclusively disposes of an issue raised by way of defence or precludes the defendant from raising a defence deprives the defendant of a substantive right and is a final order: *Ball v. Donais* (1993), 13 O.R. (3d) 322 (C.A.).

[18] In this case, the motion judge denied the insurers leave to amend the pleadings to plead civil fraud.

[19] Civil fraud differs from the defences already pleaded by the insurers, including defences based on specific provisions of the policy and common law breach of the duty of good faith.

[20] The *Rules* require that affirmative defences be specifically pleaded to avoid surprise at trial. The particulars should set out how the elements of fraud are met and the same facts may support different forms of relief depending on the defence pleaded: *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, r. 25.06(8); *A.A. v. Macri*, 2010 ONCA 99, at para. 37; *Teefy Developments (Bathurst Glen) Limited v. Sun*, 2021 ONCA 870, at para. 14. Civil fraud requires proof of a false representation, knowledge of the falsehood or recklessness, reliance on the representation, and a resulting loss: *Bruno Appliance and Furniture, Inc. v. Hryniak*, 2014 SCC 8, [2014] 1 S.C.R. 126, at paras. 17-21.

[21] The moving party concedes that civil fraud is a distinct defence and that the motion judge denied the insurers the right to assert civil fraud.

[22] The order refusing the proposed amendment therefore forecloses a new substantive defence. Accordingly, an appeal lies as of right to this court: *Courts of Justice Act*, s. 6(1)(b).

CONCLUSION

[23] For these reasons the motion to quash is denied. The hearing of this appeal is to be expedited as the trial is scheduled to take place in September 2026.

[24] Costs are to be paid to the responding party insurers jointly in the amount of \$5,000 inclusive of HST and disbursements.

“David M. Paciocco J.A.”
“Thorburn J.A.”
“J. Dawe J.A.”