COURT OF APPEAL FOR ONTARIO

CITATION: Yang v. Co-operators General Insurance Company, 2022 ONCA 178
DATE: 20220302
DOCKET: C69292

Lauwers, Huscroft and Coroza JJ.A.

BETWEEN

Celia Yang

Plaintiff (Appellant)

and

Co-operators General Insurance Company, Vivian Poon, Mala Leidoux, SCM Insurance Services Inc. (a.k.a. Cira Medical Services Inc.), Dr. Robert Brian Hines, Ranya Ghatas, SCM Insurance Services GP Inc., Cira Health Solutions LP, Dr. Abraham Orner (a.k.a. Dr. Avi Orner), Ariel Ang and SmartSimple Software Inc.

Defendants (Respondents)

Paul Bates, Peter Murray and Ashu Ismail, for the appellant

R. Lee Akazaki, for the respondents, SCM Insurance Services Inc. (a.k.a. Cira Medical Services Inc.), SCM Insurance Services GP Inc., Cira Health Solutions LP, Dr. Abraham Orner (a.k.a. Dr. Avi Orner), and Ariel Ang

P. Voula Kotoulas, for the respondent, Ranya Ghatas

Anne E. Posno and Kathleen Glowach, for the respondent, Dr. Robert Brian Hines

Daniel Freudman, for the respondent, SmartSimple Software Inc.

Heard: Thursday, January 27, 2022 by video conference

On appeal from the order of Justice Paul Perell of the Superior Court of Justice, dated March 1, 2021, with reasons reported at 2021 ONSC 1540.

REASONS FOR DECISION

[1] The motion judge dismissed the appellant's action because the Superior Court lacked jurisdiction over the subject matter. He also held that the appellant's asserted causes of action had no chance of success and that her pleadings were so frivolous, scandalous, and vexatious that they should be struck without leave to amend under r. 25.11 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

[2] The appellant appeals from this decision. She argues that the motion judge erred in holding that the Superior Court lacked jurisdiction over the subject matter of her claim and that in striking her pleadings under both rr. 21.01(1)(b) and 25.11.

[3] We do not accept these arguments. The appeal is dismissed for the reasons that follow.

[4] The motion judge made no error in interpreting and applying s. 280 of the *Insurance Act*, R.S.O. 1990, c. I.8, which grants the Licence Appeal Tribunal exclusive jurisdiction over disputes in respect of statutory accident benefits. To that extent, s. 280(3) also deprives the Superior Court of jurisdiction.

[5] Although the statement of claim alleges many causes of action, as the motion judge noted the crux of the appellant's complaints is a dispute about how her insurer (Co-operators) handled her claims under the *Statutory Accident Benefits Schedule*, being O. Reg. 34/10 under the *Insurance Act*. She alleges that her insurer coerced the respondent health care practitioners into "staging" multiple

examinations under s. 44 of the *Schedule* and preparing false reports and that the other respondents were complicit in that conspiracy. As part of this conspiracy, she alleges that her insurer, the assessors, and SmartSimple Software Inc. breached her privacy and withheld or destroyed relevant documents.

[6] The motion judge relied on this court's decision in *Stegenga v. Economical Mutual Insurance Co.*, 2019 ONCA 615, 147 O.R. (3d) 65, in which Zarnett J.A. held that s. 280 covers a wide array of disagreements connected in some way to statutory accident benefits, including disagreements about how the insurer's obligations were or should have been performed.

[7] At its core, the appellant's statement of claim concerns the respondents' alleged efforts to circumvent the *Schedule*. Framing the action as one in bribery, conspiracy, breach of privacy, breach of contract, or breach of fiduciary duty does not alter the substance of her claim: *Stegenga*, at paras. 54-61; *Mader v. South Easthope Mutual Insurance Company*, 2014 ONCA 714, 123 O.R. (3d) 120.

[8] Now that the appellant has settled with her insurer and its employees, she submits that s. 280 is not a bar to her claim because the Licence Appeal Tribunal is empowered only to adjudicate disputes between an insured and an insurer. The appellant relies on the language of s. 280, as well as *Dorman v. Economical Mutual Insurance Company*, 2021 ONCA 314, 155 O.R. (3d) 338, and *Lowe v. Guarantee Co. of North America* (2005), 80 O.R. (3d) 222 (C.A.).

[9] We disagree. The claim in *Dorman* that this court held was not statute-barred by s. 280 was a class action for systemic negligence against the Financial Services Commission of Ontario ("FSCO"). The allegations against FSCO were that it had failed to investigate complaints against insurers and failed to enforce its own guidelines. In constrast, the appellant's claims concern the way in which she was assessed for statutory accident benefits under s. 44 of the *Schedule*. That is squarely within the Licence Appeal Tribunal's mandate. The only damage pleaded attributable to the remaining defendants is that the appellant may have received fewer benefits than she was owed. As the motion judge noted, her physical injuries arise from the car accident, not the actions of the respondents. In the words of *Dorman*, this remains a case "concerned with [*Schedule*] benefits and amounts": at para. 4. On the pleadings in this case, there is no need to revisit the interpretation of s. 280 thoroughly cavassed in *Stegenga*.

[10] The appellant chose to settle with her insurer. The fact that she cannot now independently seek damages against each of the other parties does not oust the Tribunal's jurisdiction over the subject matter of the claim: *Stegenga*, at para. 52.

[11] Even if the action were not barred by s. 280 of the *Insurance Act*, the motion judge's refusal to grant leave to the appellant to amend her pleadings is a discretionary decision entitled to deference: *Darmar Farms Inc. v. Syngenta Canada Inc.*, 2019 ONCA 789, 148 O.R. (3d) 115, at para. 30. We see no reason to interfere with his decision to deny leave.

[12] In these circumstances, it is unnecessary to review the motion judge's conclusions on each cause of action.

[13] The appellant also appeals from the motion judge's costs order. However, she has not sought leave to appeal costs, which is required when the main appeal is dismissed: *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 133(b). In any event, the appellant has failed to identify any error in principle that would justify interference with the motion judge's costs order: *Hamilton v. Open Window Bakery Ltd.*, 2004 SCC 9, [2004] 1 S.C.R. 303.

[14] The appeal is dismissed. The respondents are entitled to costs of this appeal in the following all-inclusive amounts:

a) $15,000 to SCM Insurance Services Inc. (a.k.a. Cira Medical Services Inc.), SCM Insurance Services GP Inc., Cira Health Solutions LP, Dr. Abraham Orner (a.k.a. Dr. Avi Orner), and Ariel Ang;

b) $10,000 to Dr. Robert Brian Hines;

c) $7,000 to SmartSimple Software Inc.; and

d) No costs to Ranya Ghatas.

P. Lauwers J.A.

J.A.

S. Coroza J.A.