

Case Name:
Gill v. Natt

**RE: Sarbit Gill, (Plaintiff/Respondent), and
Bhupinder Natt, The Personal Insurance Company, et al.,
(Defendants/Appellant)**

[2016] O.J. No. 2024

2016 ONSC 2652

Court File No.: CV-12-2385-00

Ontario Superior Court of Justice

M. Donohue J.

Heard: By written submissions.
Judgment: April 20, 2016.

(36 paras.)

Insurance law -- Actions -- Practice and procedure -- Judgments and orders -- Summary judgments -- Appeals and judicial review -- Motion by the defendant The Personal Insurance Company for leave to appeal the order denying its request for summary judgment allowed -- The plaintiff was in a motor vehicle accident while a passenger in an uninsured vehicle -- She was seeking uninsured coverage from The Personal -- There was good reason to doubt the correctness of the order as the Court sought to require evidence that was not relevant to the issues -- Furthermore, the issues involved in the appeal were matters of sufficient importance that granting leave to appeal was appropriate -- Rules of Civil Procedure, Rule 62.02(4).

Statutes, Regulations and Rules Cited:

Compulsory Automobile Insurance Act,

Insurance Act, R.S.O. 1990, c. I.8, s. 254, s. 265

Motor Vehicle Accident Claims Act, R.S.O. 1990, c. M.41, s. 8(2)

Rules of Civil Procedure, R.R.O. 1990, Reg. 194, Rule 3.02(1), Rule 20.04(2), Rule 62.02, Rule 62.02(4)

Counsel:

David F. Murray, Christian B. Farahat, Counsel for the Defendant The Personal Insurance Company.

Marie Sydney, Counsel for the Minister of Finance in the name of the Defendants Bhupinder Natt and Gurwarinder Gill.

Charles Stitz, Counsel for the Plaintiff Sarbjit Gill.

ENDORSEMENT

M. DONOHUE J.:--

INTRODUCTION

1 The defendant, The Personal Insurance Company, seeks leave to appeal from the order of the Honourable Justice Snowie dated November 26, 2014. In that order, the motion judge denied the insurer's request for summary judgment.

BACKGROUND

2 The plaintiff, Sarbjit Gill, was a passenger in a vehicle owned by Gerwarinder Gill, her husband, and operated by Bhupinder Natt. That vehicle was not insured at the time of her motor vehicle accident on June 9, 2006.

3 She brought an action against Mr. Gill and Mr. Natt and also against the owners and operators of several other vehicles involved in the collision. One of the defendants was Mr. Jimenez who was insured by The Personal Insurance Company.

4 Ms. Gill claimed and was provided accident benefits from The Personal, as the vehicle in which she was a passenger had no insurance.

5 Ms. Gill then amended her tort Statement of Claim to pursue uninsured coverage from The Personal on the basis that she became an "insured person" within the meaning of the *Insurance Act*, R.S.O. 1990, c. I.8, when she qualified for accident benefits from The Personal.

6 The Personal thereby third partied State Farm Insurance, York Fire Insurance and Dominion Insurance for equal contribution to the plaintiff's claims if it is found that she is entitled to claim on The Personal's uninsured coverage. These latter three insurers were the insurers of three other vehicles involved in the collision.

THE SUMMARY JUDGMENT MOTION

7 The Personal brought the motion for summary judgment on the grounds that neither the Jimenez vehicle, nor any of the other vehicles involved, met the definition of uninsured motor vehicle and so no coverage was available for this claim. Further, the grounds were that the plaintiff was the common law owner of the Gill vehicle and she caused or permitted it to be operated without valid insurance. The Personal argued that the definition for uninsured automobile in s. 265(2) of the *Insurance Act* contains an exclusion which specifies that an "uninsured automobile" does not in-

clude an automobile owned by the insured or his/her spouse such that there would be no coverage to Ms. Gill. On these bases The Personal argued that she could not recover damages as against the insurer and there was no genuine issue for trial.

ENDORSEMENT BY JUSTICE SNOWIE

8 The summary judgment motion was dismissed. Justice Snowie found that the motion was premature. The court found there was no sworn evidence that there was no "other uninsured vehicle" that would require The Personal Insurance to be involved. The court ordered that the motion should be brought at the end of trial and that liability was a live and genuine issue for trial.

MOTION FOR LEAVE

9 The Personal seeks leave to appeal the decision to the Divisional Court pursuant to r. 62.02 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

10 The only party that filed responding materials to the motion for leave was the Minister of Finance, acting in the name of the defendants, Bhupinder Natt and Gurwarinder Gill pursuant to s. 8(2) of the *Motor Vehicle Accident Claims Act*, R.S.O. 1990, c. M.41.

11 The plaintiff, Sarbjit Gill, filed responding materials that dealt with the merits of summary judgment motion. Those materials did not address the issues relating to the grounds for leave to appeal.

EXTENSION OF TIME

12 The defendant The Personal Insurance sought an extension of time for the consideration of this appeal.

13 The responding party, the Minister of Finance, on behalf of the defendants Bhupinder Natt and Gurwarinder Gill, does not oppose the extension of time sought.

14 The respondent party, the plaintiff, made no submissions on the issue of extension of time.

15 The materials disclose that The Personal had made its intention to pursue an appeal promptly and continuously since filing their notice of motion for leave to appeal. Counsel for the appellant had been seeking hearing dates and was unaware that the regulations had been changed on January 1, 2015 to have the leave to appeal matters heard by way of written materials rather than an oral hearing.

16 The responding parties have not suggested there is prejudice to them if the extension of time is granted.

17 Pursuant to Rule 3.02(1) I am prepared to extend the time for the service of the motion materials to allow this motion for leave to proceed.

TEST FOR LEAVE TO APPEAL

18 The test for granting leave to appeal under Rule 62.02(4) is well-settled. It is recognized that leave should not be easily granted and the test to be met is a very strict one. There are two possible branches upon which leave may be granted. Both branches involve a two-part test and, in each case, both aspects of the two-part test must be met before leave may be granted.

19 Under Rule 62.02(4)(a), the moving party must establish that there is a conflicting decision of another judge or court in Ontario or elsewhere (but not a lower level court) and that it is, in the

opinion of the judge hearing the motion, "desirable that leave to appeal be granted." A "conflicting decision" must be with respect to a matter of principle, not merely a situation in which a different result was reached in respect of particular facts: *Comtrade Petroleum Inc. v. 490300 Ontario Ltd.* (1992), 7 O.R. (3d) 542 (Div. Ct.).

20 Under Rule 62.02(4)(b), the moving party must establish that there is reason to doubt the correctness of the order in question and that the proposed appeal involves matters of such importance that leave to appeal should be granted. It is not necessary that the judge granting leave be satisfied that the decision in question was actually wrong -- that aspect of the test is satisfied if the judge granting leave finds that the correctness of the order is open to "very serious debate": *Nazari v. OTIP/RAEO Insurance Co.*, [2003] O.J. No. 3442 (S.C.); *Ash v. Lloyd's Corp.* (1992), 8 O.R. (3d) 282 (Gen. Div.). In addition, the moving party must demonstrate matters of importance that go beyond the interests of the immediate parties and involve questions of general or public importance relevant to the development of the law and administration of justice: *Rankin v. McLeod, Young, Weir Ltd.* (1986), 57 O.R. (2d) 569 (H.C.); *Greslik v. Ontario Legal Aid Plan* (1988), 65 O.R. (2d) 110 (Div. Ct.).

Issue 1: Is there a conflicting decision by another court on the matter involved in the proposed appeal and is it desirable that leave be granted?

21 The proposed appeal would look at:

- (a) is the Gill vehicle an "uninsured automobile" pursuant to s. 265 of the *Insurance Act*;
- (b) is the plaintiff a "person insured under the contract" pursuant to s. 265(2) of the *Insurance Act*;
- (c) is the Plaintiff the owner of the Gill vehicle for the purpose of the *Compulsory Automobile Insurance Act*; and
- (d) should the court grant summary judgment in the form of an order dismissing the claim against The Personal pursuant to Rule 20.04(2).

22 The decisions proffered by The Personal as conflicting decisions under this limb of the test are not, in my view, conflicting decisions which relate to the issues in the proposed appeal noted above in the above paragraph (a) to (d).

23 Accordingly, I decline to grant leave to appeal on this limb of Rule 62.02(4).

Issue 2(i) Is there good reason to doubt the correctness of the order in question?

24 The justice's decision did not rule on the issues (a) to (d) noted above and ruled that The Personal, in bringing their motion had not provided any sworn evidence to the court that the only potentially uninsured vehicle was the Gill vehicle.

25 As noted above, the justice did not deal with the orders sought because she sought evidence of any "other uninsured vehicle" in the accident. As this is irrelevant to the issues to be decided I consider there is good reason to doubt the correctness of her decision.

26 As noted by the appellant, the relevance of any "other uninsured vehicle" under s. 265(1) of the *Insurance Act* would only exist if the plaintiff was an occupant of an insured vehicle, an occupant in the "the other uninsured vehicle" or was not an occupant and was struck by the "other uninsured vehicle". None of those situations existed here.

27 This case is similar to the decision in *Kassian Estate v. Canada (Attorney General)*, 2013 ONSC 892, 114 O.R. (3d) 617, at paras. 27-37, where Justice Beaudoin granted leave to appeal where the motion judge relied on evidence irrelevant to the determination of the issue. In the case at hand, the justice sought evidence irrelevant to the determination of the issue and thereby denied a hearing on the merits.

28 Sworn evidence that there was no "other uninsured vehicle" was not a condition precedent to the motion proceeding on the merits. This is a matter of principle that The Personal should not have been denied a hearing on such grounds. I find that there is good reason to doubt the correctness of the justice's decision on this basis.

29 Furthermore, the justice's decision was that the motion must be held at the end of trial. In light of there being a number of companion actions and a great number of counsel per force, there was value in having the issue canvassed and decided in advance of a lengthy trial.

30 Deferring an issue of coverage to the end of trial also gives rise to good reason to doubt the correctness of the decision in these circumstances.

Issue 2(ii) Does the proposed appeal involve matters of such importance that leave should be granted?

31 "Matters of such importance" do not relate to those important only to the litigants. They must go beyond the interest of the immediate parties. *Stamatopoulos v. Harris*, 2013 ONSC 7844, at para 21.

32 I find that a determination of such potential coverage on uninsured policies is a province-wide issue as it is a compulsory provision of all policies in the province for every vehicle on the road. Such a determination impacts on the development of law and the consequences of insurers covering accident benefits and then being obligated to provide uninsured coverage. This has an impact far beyond the confines of this action.

33 A determination on this point addresses the state of law regarding s. 254 of the *Insurance Act*. (*Kassian Estate*). It goes beyond the dispute between just the parties in this litigation. See *Cotnam v. National Capital Commission*, 2013 ONSC 5502, at paras. 8,13.

CONCLUSION

34 I am satisfied that leave to appeal ought to be granted. I have good reason to doubt the correctness of the order as the court sought to require evidence that was not relevant to the issues and deferred the coverage issue until the end of trial.

35 Furthermore, I am satisfied that the issues involved in this appeal are matters of sufficient important that leave to appeal ought to be granted. They involve the state of the law regarding s. 254 of the *Insurance Act* and the uninsurance coverage for all policyholders in the province.

COSTS

36 I reserve the disposition of costs to the panel hearing the appeal but require submissions on the quantum. The Personal may forward submissions of one page plus any costs outline within 14 days of this decision and the Minister of Finance may respond with submissions of one page plus any costs outline within seven days thereafter.

M. DONOHUE J.