CITATION: Powell v. Maisuria, 2017 ONSC 2278
COURT FILE NO.: CV-16-552608
DATE: 2017 04 11

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: CANDACE POWELL – and – TERENCE MAISURIA, KOSHINI MAISURIA, and INTACT INSURANCE COMPANY

BEFORE: LEMAY J.

COUNSEL: C. Finlay, for the Plaintiff

P. Pollack, for the Defendants, Koshini Maisuria and Terence Maisuria

ENDORSEMENT

[1] This is a Motor Vehicle Action that took place in the City of Brampton in May of 2014. A statement of claim was issued in Toronto in May of 2016, and the action has not yet progressed to the discovery stage.

[2] The Defendants Terence and Koshini Maisuria assert that this action should be transferred to Brampton from Toronto. They base their position on the fact that the accident took place in Brampton, and both the Plaintiff and the Maisurias live in Brampton. The Defendant Intact Insurance Company took no position on this motion.

[3] The Plaintiff asserts that this action should be heard in Toronto because there is more connection to Toronto than to Brampton. In addition, the Plaintiff

asserts that, in a transfer motion, the moving party must establish that the new jurisdiction, in this case Brampton, is not just better than the venue chosen by the Plaintiff (Toronto), but significantly better. Finally, the Plaintiff asserts that the fact that there is mandatory mediation available in Toronto makes it a better venue.

[4] For the reasons that follow, I am dismissing the Maisuria's motion. This action shall remain in Brampton.

Analysis

[5] Under the current practice direction, the Regional Senior Judge or the designate in the region that the moving party is seeking to transfer the action to is responsible for considering the transfer motion. I have been designated by Daley R.S.J. to hear transfer motions for the Central West Region.

[6] I heard this argument by way of a conference call on April 3rd, 2017. At the conclusion of the conference call, I invited both counsel to provide me with case-law to support their positions. I have reviewed that case law in reaching my decision.

[7] Motions to transfer are governed by the principles in Rules 13.1.02(1) and 13.1.02(2), which state:

Motion to Transfer to Another County

> **13**.1.02 (1) If subrule 13.1.01 (1) applies to a proceeding but a plaintiff or applicant commences it in another place, the court may, on its own initiative or on any party's motion, order that the proceeding be transferred to the county where it should have been commenced. O. Reg. 14/04, s. 10.
>
> (2) If subrule (1) does not apply, the court may, on any party's motion, make an order to transfer the proceeding to a county other than the one where it was commenced, if the court is satisfied,
>
> (a) that it is likely that a fair hearing cannot be held in the county where the proceeding was commenced; or
>
> (b) that a transfer is desirable in the interest of justice, having regard to,
>
> (i) where a substantial part of the events or omissions that gave rise to the claim occurred,
>
> (ii) where a substantial part of the damages were sustained,
>
> (iii) where the subject-matter of the proceeding is or was located,
>
> (iv) any local community's interest in the subject-matter of the proceeding,
>
> (v) the convenience of the parties, the witnesses and the court,
>
> (vi) whether there are counterclaims, crossclaims, or third or subsequent party claims,
>
> (vii) any advantages or disadvantages of a particular place with respect to securing the just, most expeditious and least expensive determination of the proceeding on its merits,
>
> (viii) whether judges and court facilities are available at the other county, and
>
> (ix) any other relevant matter. O. Reg. 14/04, s. 10.

[8] Subsection (2)(a) does not apply in this case, as there is no evidence that a fair hearing cannot be held in Toronto. As a result, in considering this motion, I am to consider the principles set out in subsection 2(b) of the Rule.

[9] I start with the observation that the Plaintiff has the right, at the outset, to decide which County she is going to bring her action in.

[10] If the choice that the Plaintiff makes is a reasonable venue for trial and the proposed venue is also a reasonable venue for the trial, then the Court will look at the factors holistically to determine which venue is a more reasonable location for the trial. On this point, see the decision in *Chatterson et. al. v. M&M Meat Shops Ltd.* (2014 ONSC 1897 (Div. Ct.)) as well as *Siemens Canada Ltd. V. Ottawa (City)* ((2008) 93 O.R. (3d) 220 (Ont. S.C.J.)).

[11] The Court will consider the list of factors in the Rule holistically. This principle was discussed in *Samuel v. Kearley* (2015 ONSC 4784), where Himel J. stated:

> 4. Rule 13.1.02(2) of the *Rules of Civil Procedure* and the Practice Direction for the Superior Court of Justice outline how a change of **venue** application should proceed. The onus is on the moving party to show that it is in the interests of justice to **transfer** the actions. The court is to consider a "holistic" application of the factors outlined in the rule: see **Chatterson** v. M & M Meat Shops Ltd. 2014 Carswell Ont 3840, 2014 ONSC 1897, 238 A.C.W.S.S (3d) 856 at para. 20. The moving party must show that the proposed place of trial is not only better, but is significantly better, than the plaintiff's choice of trial.

[12] This approach has also been adopted in *McLoughin v. Mladenovski* (2016 ONSC 2222). It is important to note that, on this motion, the Defendants must show that Brampton is a significantly better venue for this case.

[13] In taking a holistic approach to this case, it is my view that the transfer to Brampton should be denied as Brampton is not a significantly better locale for this trial than Toronto. There are arguments that make Brampton a better location

than Toronto for this motion, but I am of the view that Brampton is not a "significantly" better location.

[14] First, I note that the Plaintiff and Defendants are located in Brampton and the accident took place in Brampton. These facts, which relate to factors (i) to (iv) under the *Rules*, support a finding that Brampton is the more reasonable venue for the trial in this case.

[15] However, counsel for the Plaintiff points out that the Plaintiff's employer and family doctor, both of whom will be witnesses in the trial, are located in Toronto. In addition, he points out that Intact Insurance, a Defendant that is not taking a position on this motion, is also located in Toronto. These are all facts that support a finding that Toronto is the more reasonable venue for the trial in this case.

[16] Further, counsel for the Plaintiff points out that the Plaintiff is seeking accident treatment from a clinic in Toronto, and a psychologist who is also located in the very north end of Toronto. Again, these are all facts that support a finding that Toronto is the more reasonable venue in this case as these witness will likely be called to testify.

[17] This is a case where there are factors that suggest either Toronto or Brampton could be a reasonable venue for this action. If it were a balancing

exercise, then I might very well conclude that Brampton was the better place for this action to be brought. However, that is not the test I am required to apply.

[18] The Plaintiff is entitled, at first instance, to choose the venue for her action. She has chosen Toronto, which is a reasonable choice. In light of that fact, I should only transfer this action to Brampton if I believe that Brampton would be a substantially better venue for it. I cannot reach that conclusion on these facts. As a result, the transfer motion fails.

[19] It is possible, however, that as the facts of this litigation develop, a different view might be reached. In particular, as the parties choose their experts and as the Plaintiff's treatment regimen develops, the balance set out above might change. As a result, if there are significant changes, then the Defendant can renew its motion to transfer once the action is closer to trial.

[20] Finally, there is the Plaintiff's position that Toronto offers mandatory mediation, which makes Toronto a better venue than Brampton for this case. While this is a factor that the Court could potentially consider, it is certainly not determinative of the issue. Given my findings on the other factors that Brampton is not significantly better than Toronto for this action, I do not need to resolve the significance of the fact that Toronto has mandatory mediation to determine this application.

Disposition

[21] For the foregoing reasons, the Defendants' motion is dismissed, without prejudice to bringing a further motion after discoveries have been held and the matter is closer to trial.

[22] In the event that the parties are not able to agree on costs, then the Plaintiff is to provide costs submissions that are not to exceed two (2) double-spaced pages exclusive of bills of cost and case law by April 20th, 2017.

[23] The Defendants will have until April 28th, 2017 to provide their costs submissions, which are also not to exceed two (2) double-spaced pages exclusive of bills of cost and case law.

[24] There shall be no reply submissions on costs without my leave.

LeMay J.

DATE: April 12, 2017