

Case Name:

Matusovski v. Security National Insurance Co.

Between

**Vladen Matusovski, Plaintiff, and
Security National Insurance Company, Defendant**

[2015] O.J. No. 2052

Court File No. CV-11-423147

Ontario Superior Court of Justice
Toronto, Ontario

Matheson J.

January 21, 2015.

(8 paras.)

Counsel:

Plaintiff: Self-represented, assisted with an interpreter.

J. Pasternak and G. Nardella for the Defendant.

ENDORSEMENT

1 MATHESON J.:-- This is an appeal from the decision of Master Hawkins dated August 29, 2014, granting the defendant leave to amend its statement of defense, leave to deliver a jury notice and costs.

2 The plaintiff submits that he was rushed to the hospital over the lunch break on the date of the hearing before Master Hawkins, who went ahead without him, causing an unfairness. The plaintiff's appeal also challenges the Master's decision on its merit, as set out in the Notice of Appeal.

3 In support of this appeal, the plaintiff has provided an affidavit, in which he says that on the

hearing date he felt sick and was rushed to the hospital, however, no details or medical records were provided.

4 Today, I gave the plaintiff a free opportunity to make oral submissions in support of this appeal. based on those submissions and the material that forms the evidentiary record, I conclude that there was no unfairness in all the circumstances. While I expect better evidence of what occurred on the hearing day (including at least a copy of hospital record or a doctor's note), I conclude the oral submissions would not have affected the relief granted in any event, as follows:

1. With respect to the amendment to the Statement of Defence, Rule 26.01 provides that the Court shall grant leave to amend a pleading unless there is prejudice that would result that cannot be compensated for by costs or an adjournment. No such prejudice was demonstrated on the record. The Master was therefore obligated to grant leave to amend.
2. Leave to deliver a jury notice was not required. Rule 47.01 allows for the delivery of a jury notice at any time before the close of pleadings. Once the pleading amendment is permitted, as it was, the pleadings are reopened unless limited, and there was no limitation here. In the circumstances, Master Hawkins decision was appropriate, albeit unnecessary.

5 I therefore conclude that I do not even have to apply the Standard of Review to conclude that the appeal from the first two orders be dismissed.

6 With respect to Master Hawkins costs' order, based on the material and submissions before me, I see no reason to interfere with this discretionary order.

7 With respect to the costs of this appeal, the ordinary rule should apply, that is, the successful party should have its costs.

8 However, I am substantially reducing the amount claimed due to the actual length of the hearing and to allow for one counsel only. The appeal is there dismissed with costs to the defendant fixed at \$1,850.

MATHESON J.