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FROM: Colin O'Sullivan, Judicial Assistant
on behalf of the Honourable Mr. Justice P.R. Sweeny

DATE: November 22, 2017

RE: **Keays v. CAA Insurance Company – Hamilton Court File No. 17-62245-SR
Endorsement of Mr. Justice P.R. Sweeny (sent by regular mail)**

Attached please find the Endorsement of the Honourable Mr. Justice P.R. Sweeny in the above-noted matter, released today.

Sincerely,

Colin O'Sullivan
Judicial Assistant

CITATION: Keays v. CAA Insurance Company

COURT FILE NO.: 17-62245 SR

DATE: 2017-11-22

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Rita Keays, Plaintiff

A N D:

CAA Insurance Company, Defendant

BEFORE: The Honourable Mr. Justice P. R. Sweeny

COUNSEL: Rita Keays, Plaintiff, Self-Represented

George Kanellakos, for the Defendant, CAA Insurance Company

HEARD: November 21, 2017

ENDORSEMENT

[1] The defendant moves under rule 21.01(1)(b) of the *Rules of Civil Procedure* to strike out the plaintiff's action on the grounds that it discloses no reasonable cause of action. In the alternative, the defendant seeks an order pursuant to rule 21.01(3) (a) and (d) of the *Rules of Civil Procedure* that the plaintiff's action be dismissed on the grounds that the court has no jurisdiction over the subject matter of the action and/or that the action is frivolous, vexatious or is otherwise an abuse of process of the court. In the further alternative, the defendant seeks an order pursuant to rule 25.11 (b) and (c) of the *Rules of Civil Procedure* that the plaintiff statement of claim be struck out on the grounds that it is scandalous, frivolous or vexatious or is otherwise an abuse of process of the court.

[2] The statement of claim in this matter is devoid of material facts. The substantive portion of the claim is one page with nine sentences. It contains conclusory statements with respect to the conduct of the defendant. The statement of claim itself does not refer to a motor vehicle accident at all.

[3] The claim alleges that the defendant "did not satisfy the duty of good faith and fair dealing by refusing to pay out a valid claim." The details of the alleged valid claim are not provided.

[4] The claim alleges that "the defendant failed its duty to reasonably investigate a claim." Once again, there is no details with respect to any particular claim. What claim?

[5] The claim alleges that “the defendant practices deceptive practices and deliberately misrepresents to avoid paying out the claim. No details of any practices or deliberate misrepresentations are set out in the claim.

[6] The claim alleges “that the defendant deliberately practices misrepresentations of record in hopes to avoiding coverage.” The alleged misrepresentations are not set out. The basis upon which they seek to avoid coverage is not set out.

[7] Statement of claim alleges “unreasonable delay in resolving claims or failure to investigate appropriately.” No details are provided.

[8] The claim alleges “abusive tactics used to deny the claim.” No details are provided.

[9] The claim alleges “unreasonable litigation conduct” with no details.

[10] The claim alleges “that the insurer fails to maintain adequate investigation procedures.” No particulars are provided.

[11] The claim alleges “that the insurer demonstrates deliberate “stonewalling” tactics.” Once again, no details are provided.

Is the Claim Barred by S. 280(3) of the *Insurance Act*?

[12] The defendant submits that this claim is barred by virtue of section 280 of the *Insurance Act* which provides, in part:

Resolution of disputes

280. (1) This section applies with respect to the resolution of disputes in respect of an insured person’s entitlement to statutory accident benefits or in respect of the amount of statutory accident benefits to which an insured person is entitled. 2014, c. 9, Sched. 3, s. 14.

Application to Tribunal

(2) The insured person or the insurer may apply to the Licence Appeal Tribunal to resolve a dispute described in subsection (1). 2014, c. 9, Sched. 3, s. 14.

Limit on court proceedings

(3) No person may bring a proceeding in any court with respect to a dispute described in subsection (1), other than an appeal from a decision of the Licence Appeal Tribunal or an application for judicial review. 2014, c. 9, Sched. 3, s. 14.

Resolution in accordance with Schedule

(4) The dispute shall be resolved in accordance with the *Statutory Accident Benefits Schedule*. 2014, c. 9, Sched. 3, s. 14.

[13] In making this argument, the defendant acknowledges the plaintiff was involved in a motor vehicle accident on June 1, 2012. The defendant also admits that it was the automobile insurer of the plaintiff under a policy of insurance bearing policy number A000331366. The defendant says the plaintiff cannot make a claim for statutory accident benefits against the defendant and the claim is barred.

[14] The plaintiff in her submissions advised that this is not a claim for accident benefits. She acknowledges that she has received all the benefits to which she was entitled. She received \$3000. The claim itself does not articulate the claim for anything aside from \$30,000 personal injury and \$20,000 punitive damages.

[15] The Court of Appeal wrote in *Aviva insurance Company of Canada v. McKeown*, 2017 ONCA 563 after citing section 280(3):

Since April 1, 2016, the License Appeal Tribunal has the exclusive jurisdiction to resolve such disputes, subject to appeal or judicial review in the courts.

[16] This claim was issued after April 1, 2016 and, accordingly, cannot be maintained for statutory accident benefits. It does not matter when the accident happened. It is the date that the claim is commenced. To the extent that the plaintiff seeks to recover against the defendant for statutory accident benefits, the claim cannot be maintained pursuant to section 280(3) of the *Insurance Act*.

Are the Pleadings Scandalous, Frivolous and Vexatious?

[17] In her submissions, the plaintiff relied on a variety of facts which were not provided in the form of an affidavit nor were they contained in the statement of claim. As I have already indicated, the statement of claim in this matter is devoid of material facts.

[18] In *Campisi v. Ontario (Workplace Safety and Insurance Board)*, [2017] O.J. No. 744 at para. 15:

While the court must accept as true the material facts as pleaded, this obligation does not extend to bald conclusory statements of fact unsupported by material facts.

[19] In *Ballard v. Stavro*, [1997] O.J. No. 3577, the court noted at para. 31:

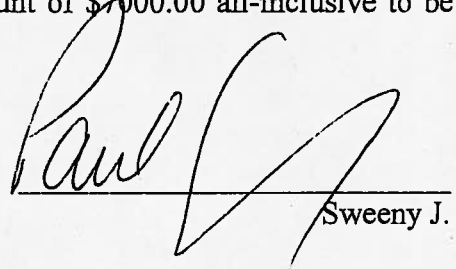
Under rule 25, statement of claim must contain a concise statement of all of the material facts on which a party relies for the claim. The issues in dispute must be sufficiently identified so as to enable the party to plead a response without having to speculate. Where this minimum level of disclosure is not satisfied, the pleading is irregular. In certain circumstances, it may be appropriate to grant leave to amend or order that particulars be granted. In others, the pleading is ordered to be struck. In an action such as this where there are serious allegations of conspiracy, the level of disclosure of material facts as required to be higher.

[20] In *George v. Harris*, [2000] O.J. No.1762, Epstein J. wrote, as follows:

It is clear that a document that demonstrates a complete absence of material facts will be declared to be frivolous and vexatious. Similarly, portions of the pleading that are irrelevant, argumentative or inserted for colour, or that constitute bare allegations should be struck out as scandalous. The same applies to document that contains only argument and includes unfounded and inflammatory attacks on the integrity of a party, and speculative unsupported allegations of defamation. In such a case the offending statements will be struck out as being scandalous and vexatious.

[21] The statement of claim in this matter demonstrates a complete absence of material facts. It is scandalous, frivolous, and vexatious and an abuse of process and the claim in its entirety is struck out. In the circumstances of this case, the plaintiff is not granted leave to amend the claim.

[22] With respect to the issue of costs, the defendant provided a costs outline. I have reviewed the outline, the defendant was required to prepare motion material and also filed a defence in this action. I fix the costs of the action and the motion the amount of \$7000.00 all-inclusive to be paid by the plaintiff to the defendant forthwith.


Sweeny J.

DATE: November 22, 2017