

Livingston v. Williamson et al.

[Indexed as: Livingston v. Williamson]

2011 ONSC 3849

Superior Court of Justice, Master Hawkins June 23, 2011

Civil procedure — Pleadings — Amendment — Misnomer — Plaintiff suing TTC as owner of bus, as employer of bus driver and as insurer providing unidentified motorist coverage following accident involving bus and unidentified driver — Plaintiff's lawyers subsequently discovering that TTC was not insurer and that insurance was provided by TTC Insurance — Plaintiff bringing motion after expiry of two-year limitation period to amend statement of claim by correcting name of insurer to TTC Insurance — Motion granted.

The plaintiff was allegedly injured when the bus on which she was a passenger braked suddenly to avoid a collision with an unidentified driver. She brought an action against the TTC and the driver of the bus. The TTC was sued as owner of the bus, as employer of the driver and as an insurer providing unidentified motorist coverage. In fact, the TTC was not an insurer. The insurer was TTC Insurance, a corporation separate from the TTC itself. The plaintiff brought a motion for leave to amend the statement of claim by correcting the name of the insurer to TTC Insurance. TTC Insurance took the position that this was not a misnomer motion but a motion to add a party brought after the two-year limitation period had expired.

Held, the motion should be granted.

Both the TTC legal department and TTC Insurance operated from the same building, had identical postal codes and were represented by the same lawyer on the argument of the motion. A representative of TTC Insurance, receiving the statement of claim and being aware that the TTC was not an insurer, would conclude that the statement of claim referred to TTC Insurance and that insofar as unidentified motorist insurance coverage was concerned, TTC Insurance had simply been misnamed as the TTC. On the evidence, the plaintiff's lawyers were ignorant of the existence of TTC Insurance until shortly before the motion was brought. Neither the TTC nor TTC Insurance had suffered any actual prejudice as a result of what had transpired.

Cases referred to

Fox v. Bourget, [1987] O.J. No. 2326, 17 C.P.C. (2d) 94 (Dist. Ct.); *Lloyd v. Clark*, [2008] O.J. No. 1682, 52 C.P.C. (6th) 41, 2008 ONCA 343, 165 A.C.W.S. (3d) 812, 44 M.P.L.R. (4th) 159; *Omerod (Litigation guardian of) v. Strathroy Middlesex General Hospital* (2009), 97 O.R. (3d) 321, [2009] O.J. No. 4071, 2009 ONCA 697, 76 C.P.C. (6th) 238, 255 O.A.C. 174

Statutes referred to

Limitations Act, 2002, S.O. 2002, c. 24, Sch. B [as am.], s. 21, (1), (2)

Rules and regulations referred to

Rules of Civil Procedure, R.R.O. 1990, Reg. 194, rules 5.04(2), 26.01

MOTION for leave to amend a statement of claim.

David M. Schell, for moving plaintiff.