

CITATION: Samuel Middleton v. Key et al. 2025 ONSC 3292
COURT FILE NO.: CV-20-00009461-0000
DATE: 20250603

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: SAMUEL MIDDLETON, Plaintiff

AND:

MATTHEW SHAWN KEY and MICHELENE CATHERINE KEY, Defendants

BEFORE: Firestone RSJ.

COUNSEL: *Thomas L. W. Orendorff*, for the Plaintiff

Ryan D. Truax and *Marcus Rozsa*, for the Defendants

HEARD: In Writing

ENDORSEMENT

[1] The Defendants bring this motion for an order transferring this proceeding from Sudbury (Northeast Region) to the Toronto Region.

[2] The Plaintiff opposes the transfer motion. He also brings a cross-motion requesting that should a transfer be necessary, it should be to Gore Bay in the Northeast Judicial Region.

[3] The motion is brought pursuant to Rule 13.1.02 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 (the “Rules”) and the procedures set forth in the Consolidated Civil Provincial Practice Direction amended February 1, 2024 (the “Practice Direction”). In accordance with the Practice Direction, I am to determine the Defendants’ request to transfer this proceeding from another judicial region to the Toronto Region.

[4] In determining whether a transfer is desirable in the interests of justice, the court is to consider the factors enumerated in subrule 13.01.02(b)

[5] The factors set forth in Rule 13.1.02(2)(b) are to be applied holistically. No one of the enumerated factors is more important than the other. These factors are to be examined together and balanced in order to determine whether a requested transfer is desirable in the interests of

justice: *Chatterson et al. v. M&M Meat Shops*, 2014 ONSC 1897, 68 C.P.C. (7th) 135 (Div. Ct.), at paras. 22, 34, and 35.

[6] Balancing the factors in Rule 13.1.02 (2)(b) is not a purely numerical or mathematical counting exercise: *Bruce Power L.P. v. BNT Canada, L.P.*, 2018 ONSC 5968, at para. 16.

[7] If the Plaintiff's choice of venue is reasonable and the Defendant challenges that venue, then a comparison of the two venues is required. The Defendant must establish that its proposed choice of venue is "significantly better" than the one chosen by the Plaintiff: *Chatterson*, at paras. 28-29.

[8] The subject collision took place in the City of Toronto. At that time the Plaintiff was a student at Tyndale University in Toronto and was employed at Starbucks. He attends university between September and April of each year. The Plaintiff is ordinarily resident in the Northeast Judicial Region.

[9] Following the collision, he was transported to the North York General Hospital and then St. Michael's Hospital in Toronto where he remained for a number of days. Upon discharge he sought treatment at the Manitoulin Health Centre.

[10] The Defendants reside in Aurora which is located the Central York Region and is part of the greater Toronto area. Neither the Defendants nor the Plaintiff reside in the City of Toronto.

[11] A number of the medical and other witness to be called at trial reside in or near the greater Toronto area. However, the record discloses that the majority of the witnesses to be called by the Plaintiff at trial are resident in the Northeast Region. This is where the post-acute care and treatment was received and is where the Plaintiff's family doctor, treating orthopedic surgeon and psychological expert reside. It is also where the Plaintiff has worked in his chosen profession.

[12] On a holistic consideration of the factors enumerated in subrule 13.1.02(2) and the circumstances of the case, I find that the Plaintiff's choice of venue was a reasonable one. I am not satisfied that the record establishes that the venue proposed by the Defendants is "significantly better" than the one chosen by the Plaintiff. It cannot be said that the Plaintiff's choice is unreasonable. I therefore dismiss the Defendants motion for a transfer.

[13] Given this result, the cross motion is also dismissed. For clarification, a request to transfer or move a proceeding within a particular judicial region from one location to another is not a determination to be made by an RSJ in a different region.

[14] I encourage the parties to agree on the issue of costs. If they cannot agree, the Plaintiff is to provide his costs submissions of no more than 2 pages by June 11, 2025. The Defendants are to provide their costs submission of the same length by June 18, 2025. Any reply is to be delivered by June 23, 2025. These submissions are to be uploaded to Case Center and provided to my judicial assistant.

Released: June 3, 2025

Firestone RSJ.