

CITATION: Birtles v. State Farm Mutual Automobile Insurance Company, 2025 ONSC 3282
COURT FILE NO.: CV-23-707961
DATE: 20250603

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
STEPHEN J. BIRTLES) *Z. Jwan Desai and Peter Cimino, for the*
Plaintiff) Plaintiff
)
– and –)
)
STATE FARM MUTUAL AUTOMOBILE) *Philippa G. Samworth, ASM, for the*
INSURANCE COMPANY and CERTAS) Defendants
HOME AND AUTO INSURANCE)
COMPANY)
Defendants)
) **HEARD:** May 6, 2025

2025 ONSC 3282 (CanLII)

REASONS FOR JUDGEMENT

MERRITT J.

OVERVIEW

[1] The Plaintiff Stephen J. Birtles’ (“Mr. Birtles” or the “Insured”) action is for a declaration setting aside a settlement of his claim for future benefits under the Statutory Accident Benefits Schedule - for accidents on or after December 31, 1993 and before November 1, 1996, Ontario Regulation 776/93 (“SABs”) on the basis that it is unconscionable and for a declaration that the Defendants State Farm Mutual Automobile Insurance Company and Certas Home and Auto Insurance Company (the “Defendant” or “the Insurer”) issued a valid policy of insurance insuring him.

[2] The Defendant brings a motion to strike the claim pursuant to r. 21 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, or to dismiss the claim pursuant to r. 25.11.

DECISION

[3] The Insurer’s motion is dismissed. The court’s jurisdiction is not ousted by s. 280 *Insurance Act*, R.S.O., 1990, c. I.8 (the “*Insurance Act*”) because Mr. Birtles’ claim is about whether his settlement was unconscionable; it is not in respect to his entitlement to SABs or the

quantum of SABs to which he is entitled. This is not the proper forum to determine whether or how Mr. Birtles must repay his settlement proceeds if he rescinds the settlement for unconscionability. Mr. Birtle's claim pleads sufficient material facts to support a claim for misrepresentation and unconscionability. It is not plain and obvious that his claim cannot succeed.

BACKGROUND FACTS

[4] Mr. Birtles was involved in a motor vehicle accident on October 12, 1994. His motorcycle collided with another vehicle and he was badly injured (the "Accident").

[5] As a result of the injuries sustained in the accident, Mr. Birtles was entitled to SABs.

[6] On January 5, 2016 the parties settled Mr. Birtles' claim for SABS and Mr. Birtles signed a Full and Final Release and Settlement Disclosure Notice (the "Settlement"). The amount paid to Mr. Birtles under the Settlement was \$600,000 (the "Settlement Funds")

[7] On October 3, 2023 Mr. Birtles issued the Statement of Claim to set aside the Settlement on the basis that it was unconscionable (the "Claim").

[8] Mr. Birtles was insured with State Farm Mutual Automobile Insurance Company ("State Farm"). At some point State Farm stopped doing business in Ontario and Certas Home and Auto Insurance Company took over that business in Ontario. There is no issue in this case about the validity of Mr. Birtles' insurance policy.

[9] On May 16, 2024 Callaghan J. denied the Defendant's request to strike the Claim under r. 2.1.

POSTIONS OF THE PARTIES

[10] The Defendant submits that the action should be dismissed pursuant to r. 21.01(3)(a) as the court has no jurisdiction "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" pursuant to section 280 of the *Insurance Act*.

[11] The Defendant says Mr. Birtles cannot rescind the settlement because he has failed to meet the condition precedent of repaying the Settlement Funds.

[12] The Defendant says that the Claim should be struck pursuant to r. 21.01(1)(b) because it discloses no reasonable cause of action.

[13] The Defendant also submits the action should be dismissed pursuant to rr. 21.01(3)(d) and 25.11(b) and (c) as it is scandalous, frivolous, vexatious, or is otherwise an abuse of process of the Court.

[14] The Plaintiff submits that the subject matter of the Claim does not relate to his entitlement to SABS benefits or the amount of SABS benefits to which he was entitled. Rather, the Claim is about setting aside the Settlement because it is unconscionable.

[15] The Plaintiff says that the issue of repayment should be addressed by the court hearing the motion to set aside the settlement for unconscionability.

[16] The Plaintiff submits that he has pled sufficient material facts and if he has not, then he should be granted leave to amend the Claim.

THE ISSUES

[17] There are four issues as follows:

- 1) Does the court have jurisdiction over the subject matter of the action?
- 2) Is Mr. Birtles barred from setting aside the Settlement because he has not returned the Settlement Funds?
- 3) Does the claim to set aside the settlement for unconscionability, duress or misrepresentation disclose a reasonable cause of action?
- 4) Is Mr. Birtles' claim scandalous, frivolous, vexatious, or otherwise an abuse of the court's process?

ANALYSIS

Issue 1: Jurisdiction

[18] Rule 21.01(3) provides:

A defendant may move before a judge to have an action stayed or dismissed on the ground that,

- (a) the court has no jurisdiction over the subject matter of the action;

and the judge may make an order or grant judgment accordingly.

[19] Section 280 of the *Insurance Act* states:

- (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.
- (2) The insured person or the insurer may apply to the Licence Appeal Tribunal to resolve a dispute described in subsection (1).

- (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.

[20] The Insurer relies on *Stegenga v. Economical Insurance Company*, 2019 ONCA 615. In *Stegenga* the insurer moved to strike a claim seeking damages for bad faith conduct. The issue before the court was whether a claim for the negligent, fraudulent or bad faith administration of accident benefits was a claim falling within the ambit of s. 280(1). The court concluded that even though Ms. Stenga claimed aggravated, exemplary or punitive damages, :

...s. 280 grants the LAT jurisdiction over Ms. Stegenga's claim, and prohibits the claim from proceeding as an action in court, notwithstanding that the action alleges bad faith and the remedies the LAT can grant are different from those a court could. This result is a consequence of the policy choice the legislature made in enacting s. 280: at para 6.

[21] The intention of the legislature was that the provision of s. 280, like the pre-April 2016 provisions regarding mandatory mediation, constitute a "...complete code for the resolution of disputes in respect of an insured person's entitlement to SABs or in respect of the amount of SABs to which an insured person is entitled": at para 37.

[22] The court said that regardless of how a cause of action is asserted and the relief claimed, disputes regarding an insurer's compliance with obligations to an insured concerning SABS entitlement including timeliness of the insurer's performance of its obligations and/or the manner in which they are administered falls within the jurisdiction of the LAT: at para. 22. The court held that, s. 280 "embraces more than a claim for the payment of a benefit not paid or paid in an incorrect amount, and extends to the way the claim was handled": at para 35.

[23] In *Stegenga* the court said that the language of s 280(1) is expansive and:

As the motion judge correctly noted, the phrase "in respect of" connotes the broadest possible connection between two subject matters: *Arsenault*, at para. 16, citing *R. v. Nowegijick*, 1983 CanLII 18 (SCC), [1983] 1 S.C.R. 29, [1983] S.C.J. No. 5, at p. 39 S.C.R. In s. 280(1), that phrase connects "dispute" to "entitlement" to statutory accident benefits or their amount: para. 42.

[24] In *Stegenga* the court cited *Mader v. South Easthope Mutual Insurance Company*, 2014 ONCA 714 at para 49 which held that the pre-216 dispute resolution provisions with virtually the same language as s. 280 applied even where the insured alleged breach of contract, breach of duty of good faith and conspiracy because the claims all flowed from the denial of benefits.

[25] The Court of Appeal noted that all of the claims asserted by Ms. Stegenga flowed from her entitlement to benefits and amounted to nothing more than a claim that the insurer had wrongly denied benefits and delayed providing benefits. It was the nature and subject matter of dispute and the underlying facts that give rise to the dispute which determined the jurisdiction issue: *Stegenga* at paras. 61-63.

[26] Where questions concerning entitlement must be determined as a predicate to determining whether there was an actionable wrong such as bad faith or misrepresentation, the LAT and not the court, has jurisdiction because the facts giving rise to the dispute relate to entitlement to benefits or to the amount of entitlement as set out in s. 280(1): *Stegenga* at paras. 64-67.

[27] The Insurer also relies on *Dorman v. Economical Mutual Insurance Company et.al.* 2020 ONSC 4004 where the court held that a class action with respect to an allegation that insurers were improperly deducting HST from SABs fell within the jurisdiction of the LAT. I do not find this case helpful because it is distinguishable. A claim about whether HST is or is not deductible from SABS is clearly a dispute about the entitlement to SABs or the amount of SABS to which the plaintiffs were entitled.

[28] The Insurer relies on *Yang v. Co-Operators General Insurance Company*, 2021 ONSC 1540 where the court dismissed the insured claim about the inappropriate handling of her accident benefits claim and held that her claim was within the exclusive jurisdiction of the SABS dispute resolution regime. *Yang* is also distinguishable. Ms. Yang's allegation involved the manner in which her insurer administered her claim because she alleged that the insurer and a service provider had a scheme to conduct multiple s. 44 examinations in order to charge more than \$2,000 for a s. 44 examination.

[29] Mr. Birtles is seeking an equitable remedy which, he submits, the LAT does not have jurisdiction to grant. As a creature of statute, the LAT is limited to the jurisdiction expressly granted by the statute: *Y.D. v. Aviva Insurance*, 2017 CanLII 43883 (ON LAT) at paras. 71 and 72; *Mansuri v. Dominion of Canada General Insurance Company*, 2022 CanLII 138547 (ON LAT) at para 18 citing *Weber v Ontario Hydro*, 1995 CanLII 108 at paras. 41,54, 57 and 67; *Basuric v. Dominion of Canada General Insurance Company (Travelers)*, 2021 CanLII 50781 (ON LAT) at paras. 23-24; *W.M. v Economical Mutual Insurance Company*, 2019 CanLII 126102 (ON LAT) at paras. 26-27; *B.A. vs. Economical Mutual Insurance Company*, 2020 CanLII 91896 (ON LAT) at paras. 51-53; *Capson v Economical Insurance Company*, 2024 CanLII 2658 (ON LAT) at para. 20; *Akinyimide v. Economical Mutual Insurance Company*, 2023 ONSC 5272 at para. 10; and *Fehr v Intact Ins. Co.*, 2022 CanLII 14951 (ON LAT) at para. 36.

[30] As set out in *Stegenga*, the fact that the plaintiff seeks a remedy which the LAT may not have jurisdiction to grant does not necessarily oust the jurisdiction of the LAT. The LAT has jurisdiction and the prohibition on court proceedings applies if the claim is about the Plaintiff's entitlement to SABs including disputes over the way the claim is handled including the timeliness and/ or the manner of the insurer's performance of its obligations: *Stegenga* at para 22.

[31] In the present case, Mr. Birtles' claims do not flow from his entitlement to benefits; they flow from the settlement of his claim for future benefits. The Claim does not amount to an allegation that the Defendant wrongly denied benefits or delayed providing benefits. At the time of the settlement there was no dispute between the parties and the plaintiff had no entitlement to a settlement of his claim for SABs.

[32] The essential character of the dispute is whether the settlement was unconscionable. The Claim is not about whether Mr. Birtles was entitled to benefits, the amount of benefits or the Insurer's non-provision of benefits. In determining whether the Settlement was unconscionable, the court may have to consider generally what benefits might have been available to Mr. Birtles; however, the determination of his entitlement to benefits is not a predicate to determining unconscionability.

[33] The Insurer submits that the Licence Appeal Tribunal ("LAT") routinely deals with applications to set aside or dispute validity of full and final releases and settlement agreements and rely on three cases as follows: *Nagarajah v TD Insurance Company*, 2022 CanLII 106470 (ON LAT) where the insured failed to provide notice to rescind and repay the benefits received, 2) *Pope v Aviva General Insurance*, 2023 CanLII 19910 (ON LAT) where the LAT upheld the settlement because the insurer complied with the Regulations and 3) *N.K. v. Certas Home and Auto Insurance*, 2018 CanLII 76411 (ON LAT) where the insured statute barred because he did not lack capacity and was not under duress.

[34] The cases *Nagarajah* and *Pope* cases are distinguishable because Mr. Birtles is not asking the court to decide if the Settlement Disclosure Notice complies with Regulation 646.

[35] In *N.K.* the LAT decided the applicant failed to establish that he was under duress or lacked mental capacity. There was no analysis of the LAT's jurisdiction to consider the equitable remedies and, of course, the issue of whether a court has jurisdiction to set aside a settlement because it is unconscionable never came up.

[36] If Mr. Birtles' settlement is set aside, it is unknown whether there will be any dispute for the LAT to resolve regarding his ongoing entitlement to SABs or the quantum of benefits to which he is entitled. I note that there was no existing dispute between Mr. Birtles and the Insurer at the time the settlement was proposed and then entered into.

[37] The determination of whether or not Mr. Birtles' settlement is unconscionable would engage little, if any, specialized knowledge concerning SABs entitlement other than in the broadest sense.

[38] The court does have jurisdiction to determine Mr. Birtles' claim. Section 280(1) does not give exclusive jurisdiction to the LAT because Mr. Birtles' claim is about whether his settlement is unconscionable and not a claim in respect of his entitlement to SABS or the amount of SABs to which he is entitled.

Issue 2: Repayment of Settlement Funds

[39] In its factum the Insurer submits that the Plaintiff's failure to repay the Settlement Funds bars him from attempting to set aside the Settlement in a proceeding in this court or before the LAT.

[40] The Plaintiff submits that any issue of whether he must repay the Settlement Funds should be determined if and when the court decides the issue of whether the Settlement is unconscionable on the merits.

[41] Pursuant to subsection 9.1(7) and (8) of the *Automobile Insurance Regulations*, R.R.O 1990, Reg. 664, (the “*Regulation*”) the insured may not rescind a settlement or apply to the LAT for SABs unless the insured returns the settlement funds.

[42] Section 9.1 of the Regulation provides:

(1) In this section,

“settlement” means an agreement between an insurer and an insured person that finally disposes of a claim or dispute in respect of the insured person’s entitlement to one or more benefits under the Statutory Accident Benefits Schedule.

(2) The insurer shall give the insured person a written disclosure notice, signed by the insurer, with respect to the settlement.

(3) The disclosure notice shall be in a form approved by the Chief Executive Officer and shall contain the following information:

1. The insurer’s offer with respect to the settlement.
2. A description of the benefits that may be available to the insured person under the Statutory Accident Benefits Schedule.
3. A statement that the insured person may, within two business days after the later of the day the insured person signs the disclosure notice and the day the insured person signs the release, rescind the settlement by delivering a written notice to the office of the insurer or its representative and returning any money received by the insured person as consideration for the settlement.
4. A description of the consequences of the settlement on the benefits described under paragraph 2 including,
 - i. a statement of the restrictions contained in the settlement on the insured person’s right to apply to the Licence Appeal Tribunal under subsection 280 (2) of the Act or appeal from a decision of the Licence Appeal Tribunal,
 - ii. a statement that the tax implications of the settlement may be different from the tax implications of the benefits described under paragraph 2 and,
 - iii. a statement that the insured person may not apply to the Licence Appeal Tribunal under subsection 280 (2) of the Act with respect to benefits that

were the subject of a settlement or a purported settlement unless the insured person has returned the money received as consideration for the settlement.

5. A statement advising the insured person to consider seeking independent legal, financial and medical advice before entering into the settlement.

6. A statement for signature by the insured person acknowledging that he or she has read the disclosure notice and considered seeking independent legal, financial and medical advice before entering into the settlement.

(4) The insured person may rescind the settlement within two business days after the later of the day the insured person signs the disclosure notice and the day the insured person signs the release.

(5) The insured person may rescind the settlement after the period referred to in subsection (4) if the insurer has not complied with subsections (2) and (3).

(6) Subsections (4) and (5) do not apply with respect to a settlement that has been approved by a court under Rule 7 of the Rules of Civil Procedure (Parties under Disability).

(7) The insured person shall rescind a settlement under subsection (4) or (5) by delivering a written notice to the office of the insurer or its representative and returning any money received by the insured person as consideration for the settlement.

(8) No person may apply to the Licence Appeal Tribunal under subsection 280 (2) of the Act with respect to benefits that were the subject of a settlement or a purported settlement unless the person has returned the money received as consideration for the settlement.

[43] The Insurer relies on *McEnaney v CGU Insurance Company of Canada*, 2022 ONSC 5956, which is a decision of Myers J. at a case conference where he refused to schedule a motion. The insured wanted to schedule a motion to set aside a settlement because the insurer failed to serve on him the mandatory disclosure notice required under s. 9.1 (2) of the version of the *Automobile Insurance regulation*, RRO 1990, Reg 664, that was then in force under the *Insurance Act*, and because the insurer purported to settle with the plaintiff's lawyer when it knew or ought to have known that the plaintiff was self-represented at the time.

[44] This case does not assist with the question before me. In *McEnaney* Myers J. said that first the preliminary issue of whether the court or the LAT had jurisdiction to hear the motion to set aside the settlement would have to be determined. Then the issue of repayment could be raised by the insurer as a preliminary objection. He refused to set a date for the motion and said that counsel should discuss whether one of them would move to determine the proper forum for the motion to set aside the settlement and where that question would be determined. He specifically did not foreclose the insured from trying to argue before a judge that the court should hear the issue of jurisdiction before the issue of the insured's repayment obligation.

[42] ...I am not prepared to foreclose the plaintiff from trying to argue before a judge that the court should hear the issue of whether a proceeding to rescind the settlement should be heard in court (to deal with the consent dismissal orders) or before the tribunal. That will then let the insurer raise the issue of repayment as a preliminary objection.

[43] It seems rather apparent that bringing everything before the tribunal would avoid a potential hopscotching of proceedings back and forth. A judge who considers whether it is appropriate for the court to hear a request to set aside the consent orders for example, might still determine that before he or she can hear that question, the parties need to have the repayment timing issue resolved at the tribunal.

[44] All that I am finding today then, is that it is premature to schedule fact-laden inquiries on the merits on either basis by which the plaintiff proposes to set aside the consent dismissal orders. The plaintiffs' proposed issues cannot be resolved by a single, simple, early motion on issues of law.

[45] In *McEnaney* the plaintiff sought to set aside the settlement for failure by the insurer to provide the mandatory disclosure notice i.e. under ss. 9.1 (2) and (5). The court said that it was clear that claims to rescind a settlement under s. 9.1 were to be brought to the LAT and that settlement funds had to be repaid before doing so.

[46] The Plaintiff submits that the statutory requirement in (7) to repay the settlement funds only applies if the insured seeks to rescind a settlement under Section 9.1 (4) i.e. within two business days or under s. (5) if the insurer has not provided proper notice and disclosure under ss. (2) and (3). The Plaintiff submits that he is not seeking to rescind the settlement under ss. (4) or (5) and therefore the repayment obligation in s (7) does not apply.

[47] In oral argument on the motion, Counsel for the Insurer fairly conceded that the court could not dismiss the Plaintiff's claim on the basis that he did not repay the settlement funds on a r. 21 motion without evidence. Counsel for the Insurer also conceded that if this court does have jurisdiction to hear the Plaintiff's claim, then the court would have jurisdiction to determine if the settlement funds must be repaid before the settlement is set aside.

[48] The Insurer also relies on *Nagarajah v. TD Insurance Company*, 2022 CanLII 106470 (ON LAT) where the LAT held that the applicant was not entitled to have his settlement rescinded as he had not provided any written notice to rescind the settlement to the respondent nor repaid any of the settlement funds received. The Insurer submits that this case for the proposition that the issue of equitable jurisdiction to set aside a settlement does not dispose of the requirement to repay settlement funds. This is not a correct interpretation of the case. In *Nagarajsh* the applicant did not argue that "equitable relief excused the applicant from the statutory requirements for notice and repayment" at para. 40.

[49] The issue of whether Mr. Birtles is required to repay the Settlement Funds should not be determined on a r. 21 motion where no evidence is admissible.

[50] If I am wrong and his claim is barred by s 280 of the *Insurance Act* it may be for the LAT to determine the issue. If I am correct and this court has jurisdiction, it may be for the judge hearing the Claim on its merits to determine the issue. On the other hand, the judge hearing the case on the merits may determine that the declaration which the Plaintiff seeks does not require a decision regarding the repayment of the settlement proceeds and the issue may arise in some other manner.

Issue 3: Cause of Action to Set Aside Settlement for Unconscionability

[51] Rule 21.01(1) provides:

A party may move before a judge

...

(b) to strike out a pleading on the ground that it discloses no reasonable cause of action

and the judge may make an order or grant judgment accordingly.

[52] Rule 21.01(1)(b) permits the court to strike a pleading on the ground that it discloses no reasonable cause of action. The test to be applied under r. 21.01(1)(b) is whether it is “plain and obvious” that the claim has no chance of success: *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, [2011] 3 S.C.R. 45, at paras. 17-19. “Plain and obvious” means “beyond doubt”: *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959 (S.C.C.), at pp. 20-21.

[53] The test under r. 21.01(1)(b) is stringent and imposes a very high threshold. Only claims that are certain to fail should be struck at the pleadings stage: *Rausch v. Pickering (City)*, 2013 ONCA 740, 369 D.L.R. (4th) 691, at para. 34, citing *Amato v. Welsh*, 2013 ONCA 258, 362 D.L.R. (4th) 38, at paras. 32-33. The court should not strike a claim if there is a chance the plaintiff might succeed: *Thelwell v. Toronto Police Services Board*, 2020 ONSC 1803, at para. 52.

[54] The facts pleaded are to be taken as true and read generously: *Ahmad v. Mehta*, 2024 ONSC 3778, at para. 3.

[55] The court should err on the side of permitting an arguable claim, even if novel, to proceed to trial: *Rausch*, at para. 34, and *Fernandez Leon v. Bayer Inc.*, 2023 ONCA 629, at para. 8. The claim should not be struck if there is a “germ or a scintilla of a cause of action”: *Golden Oaks v. Lalonde*, 2016 ONSC 5313, 133 O.R. (3d) 513, at para. 50, citing *1597203 Ontario Ltd. v. Ontario*, [2007] O.J. No. 2349 (Ont. S.C.), at para. 12.

[56] Matters of law that are not fully settled should not be disposed of on a motion to strike: *Ramirez v. Ledn Inc.*, 2023 ONSC 3716 at para. 46.

[57] Where a pleading is deficient and struck by the court, the court may grant leave to amend the pleading to allow the plaintiff to plead all the necessary ingredients of a cause of action:

Hostman-Steinberg Limited v. 2049669 Ontario Inc., 2009 CanLII 29199 (Ont. S.C.) at para. 41. Leave should be granted where it is possible that the failure to allege an essential element is the result of an oversight: *Golden Oaks*, at paras. 53 and 56. Leave to amend should only be refused in the clearest of cases: *Thelwell*, at para. 52.

[58] The doctrine of unconscionability requires (1) inequality of bargaining power; and (2) a resulting improvident bargain. Inequality of bargaining power may exist when one party cannot adequately protect their interests because of personal or situational circumstances: *Uber Technologies v. Heller*, 2020 SCC 16 (CanLII), 2020 S.C.C. at para 65 to 68 and 79.

[59] The Insurer relies on *Manuel v. Lafarge et al .*, 2024 ONSC 3790. In *Manuel* the court dismissed the plaintiff's claim on a summary judgment motion finding there was no genuine issue for trial because the evidence did not establish the release was signed under duress, the insurer illegitimately pressured the plaintiff or that the plaintiff suffered a coercion of will.

[60] Whether or not Mr. Birtles will be successful in marshalling admissible evidence to support his claim remains to be seen; however, the question on a r. 21 motion is not whether the plaintiff will succeed, but rather whether the plaintiff might succeed.

[61] The Insurer submits at para 46 of its factum that:

The Plaintiff plead no evidence of illegitimate pressure or coercion on the part of the Defendant. Nor did the Plaintiff plead any evidence that he had diminished capacity at the time the settlement was signed. The Plaintiff also failed to plead any specific misrepresentations that overcome the express terms in the settlement agreement and release.

[62] It would be improper for the Plaintiff to plead evidence. Rule 25.06 (1) provides: "Every pleading shall contain a concise statement of the material facts on which the party relies for the claim or defence, but not the evidence by which those facts are to be proved."

[63] The issue is whether facts pleaded establish an arguable claim.

[64] The Statement of Claim contains the following allegations:

- 1) Mr. Birtles suffered severe and permanent physical, psychological and/or mental injuries including a closed head injury and significant orthopedic injuries in the Accident. Mr. Birtles was in the hospital and then a rehabilitation hospital for over two months. He had numerous surgical procedures over 22 year period following the Accident.
- 2) At the time of the Accident Mr. Birtles was a Constable with Toronto Police Services; he also earned additional income through Paid Duty. He was disabled from performing his pre-accident duties and working his regular hours for prolonged periods of time in the years following the accident.
- 3) Mr. Birtles sought SABS benefits from the Insurer.

- 4) Mr. Birtles was not entitled so sued for economic losses in a tort action. Instead an extensive and comprehensive no-fault accident benefits system was created which includes, but is not limited to, Medical Rehabilitation Benefits payable for life; Attendant Care Benefits (“ACB”) payable for life; Housekeeping and Home Maintenance Benefits (“HKB”) payable for life; Weekly Income Replacement Benefits (“IRB”) and Loss of Earning Capacity Benefits (“LECB”).
- 5) The Insurer owed Mr. Birtles a duty of good faith.
- 6) The Insurer was obligated to assess Mr. Birtles’ entitlement to benefits and adjust his claim according to the *Insurance Act* and inform him of his entitlement and provide him with necessary information to access SABS benefits.
- 7) The Insurer failed to provide information in a straight-forward manner and with clear language throughout. The Insurer either provided the wrong or no information about Mr. Birtles’ entitlement to HKBs, ACBs and LECB.
- 8) On December 21, 2015, a representative of the Insurer contacted Mr. Birtles by telephone in the late evening hour with what was identified as a one-time offer of \$600,000 to settle his claim.
- 9) On January 5, 2016, a representative of the Insurer attended Mr. Birtles’ home and provided him with a Full and Final Release and Settlement Disclosure Notice, which he signed in exchange for a promise of payment of \$600,000.
- 10) On January 8, 2016 the Insurer paid Mr. Birtles \$600,000.
- 11) Mr. Birtles was not represented by legal counsel throughout his dealings with the Insurer.
- 12) Prior to the Settlement there was no dispute between the parties at the LAT.
- 13) The Insurer knew or ought to have known the value of the settlement was insufficient considering the amount of HKBs, ACBs and LECB plus interest owing at the time of settlement.
- 14) The Insurer knew that it did not provide Mr. Birtles with sufficient information to make a meaningful comparison between the settlement and the value of the SABs that might otherwise be available.
- 15) The Insurer knew Mr. Birtles could not sue for his economic losses in a tort action and was reliant on the Insurer by virtue of the statutory regime in place at the time.
- 16) The Insurer knowingly took advantage of Mr. Birtles’ vulnerability.

- 17) The Insurer took advantage of Mr. Birtles because he was in need of funds due to his financial circumstances at the time of the Settlement.
- 18) There was an overwhelming inequality of bargaining power between the parties.
- 19) The Settlement was grossly unfair and improvident.
- 20) The settlement was a result of duress, undue influence and/or misrepresentation during settlement discussions between the parties.
- 21) The settlement was premature, improvident and unconscionable.

[65] Mr. Birtles has alleged both personal and situational circumstances that might support a finding of unequal bargaining power. He has alleged he was badly injured, unable to work as usual, unable to sue for income loss in a tort action, vulnerable, in need of funds due to his financial circumstances and was reliant on the Insurer in this regard.

[66] Mr. Birtles has alleged circumstances that might support a finding of improvident settlement. He has alleged that the Insurer did not provide information concerning his entitlement that they were required to provide, he was not represented by counsel, the Settlement was presented as a “one-time” offer. He has also alleged that the Settlement is improvident when its value is compared to the value of his entitlement under the SABs.

[67] A r. 21 motion is not the time to determine if these facts are true. They are assumed to be true for the purpose of the motion.

[68] Mr. Birtles’ claim to set aside the Settlement because it is unconscionable is an arguable claim that is not doomed to fail. The facts as pled are assumed to be true and Mr. Birtles might succeed in establishing there was inequality in bargaining power and an improvident settlement.

Issue 4: Scandalous, Frivolous, Vexatious or Abuse of Process

[69] Rule 21.01(3) provides:

A defendant may move before a judge to have an action stayed or dismissed on the ground that,

- (c) the action is frivolous or vexatious or is otherwise an abuse of the process of the court,

and the judge may make an order or grant judgment accordingly.

[70] Rule 25.11 provides:

The court may strike out or expunge all or part of a pleading or other document, with or without leave to amend, on the ground that the pleading or other document,

...

(b) is scandalous, frivolous or vexatious; or

(c) is an abuse of the process of the court.

[71] In only the clearest of cases, where it is plain and obvious that the claim cannot succeed will the court strike a claim on the basis that it is frivolous, vexatious or an abuse of the process of the court: *Baradaran v. Alexanian*, 2016 ONCA 533, at para. 15.

[72] The Insurer relies on *Vaseloff v. Leo*, 2014 ONSC 5227 which says that a pleading is scandalous if it alleges inadmissible, irrelevant or argumentative facts and that facts which are prejudicial and inserted for colour, or constitute bare allegations should be struck as scandalous.

[73] Facts which are relevant are not scandalous, frivolous or vexatious: *Abbasbayli v. Fiera Foods Company*, 2021 ONCA 95 at para 49.

[74] The Insurer has not pointed to any inadmissible, irrelevant, argumentative or prejudicial facts in Mr. Birtles' Claim. There are no facts in Mr. Birtles' Claim that are designed solely for the purpose of atmosphere or colour or to cast the Insurer in a bad light: *Vaseloff* at para 59.

[75] The Insurer has not alleged that Mr. Birtles has a collateral or improper purpose in bringing the Claim and therefore not established that the Claim is an abuse of process.

[76] In support of their arguments that Mr. Birtles' Claim ought to be struck under r. 21.01(3) and r. 25.11 the Insurer merely repeats the arguments made in support of their positions under the first three issues. As set out above I find that Mr. Birtles has pled sufficient facts to support a claim of unconscionably, misrepresentation or duress.

COSTS

[77] The parties have agreed that costs shall be awarded to the successful party in the amount of \$7,500.

[78] The Insurer shall pay costs to the Plaintiff in the amount of \$7,500 inclusive of HST and disbursements.

Merritt, J

Released: June 3, 2025

CITATION: Birtles v. State Farm Mutual Automobile Insurance Company, 2025 ONSC 3282
COURT FILE NO.: CV-23-707961
DATE: 202506XX

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

STEPHEN J. BIRTLES

Plaintiff

– and –

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY and CERTAS HOME AND
AUTO INSURANCE COMPANY

Defendants

REASONS FOR JUDGMENT

Merritt, J

Released: June XX 2025