

CITATION: Awad v. Doe et al., 2025 ONSC 6633
COURT FILE NO.: CV-22-78638
DATE: 2025-11-24

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

AHMED AWAD

Plaintiff

- and -

JOHN DOE and MAY SOUTHON and
CUMIS INSURANCE COMPANY

Defendants

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) Y. Adabale, Counsel for the Plaintiff
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) S. Borenovich, Counsel for the May
) Southon, and M. Mejia, Counsel for
) Cumis Insurance Company
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) **HEARD:** October 30, 2025

ENDORSEMENT ON MOTION

Associate Justice J. Kriwetz

NATURE OF THE MOTION

[1] The Plaintiff moves for (a) an Order extending the time for service of the Statement of Claim on the Defendant, May Southon (the “Defendant”), for an additional 90 days from the date of the Order, and (b) an Order that the Statement of Claim be

served substitutionally by sending a copy to an adjuster at Desjardins General Insurance, which is alleged to be the Defendant's insurer.

THE POSITION OF THE DEFENDANTS

[2] Mr. Borenovich, counsel for Desjardins General Insurance Company ("Desjardins") filed responding materials on behalf of the Defendant, and appeared at the hearing, opposing the motion.

[3] Mr. Megia, a student-at-law, appeared at the motion for the Defendant, Cumis Insurance Company ("Cumis"). Mr. Megia advised the court that Cumis was taking no position on the motion and that he was there to observe only.

OVERVIEW OF THE MATERIALS FILED

[4] The action is for damages arising from a motor vehicle accident which occurred on September 22, 2019. The Plaintiff issued the Statement of Claim on April 28, 2022. The claim alleges that the Defendant was the other driver involved in the accident. The Plaintiff also named his own insurer, Cumis, as a defendant, based on an allegation that the Defendant was either underinsured or uninsured.

[5] It appears that, on the date of the accident, the Plaintiff attended at a collision reporting centre to report the incident. A copy of the Self Reporting Collision Report, which appears to be signed by the Plaintiff was included as an exhibit to the Plaintiff's supporting affidavit.

[6] According to the evidence filed by the Plaintiff, his counsel faxed a copy of the Statement of Claim to Desjardins on June 28, 2022, and again on August 15, 2022, but there was no response or acknowledgement from Desjardins either time.

[7] On November 18, 2022, the Plaintiff's counsel sent a follow up e-mail to Desjardins, asking Desjardins for the contact information for the adjuster assigned to the file, the policy limits, and any coverage issues. The e-mail included a specific policy number.

[8] Desjardins responded by e-mail on November 21, 2022, stating that it could not locate a claim with the policy number provided, and it requested a copy of the Statement of Claim. The Plaintiff's counsel responded by e-mail that same day attaching a copy of the Statement of Claim and asked, once again, for the adjuster on the file.

[9] On January 12, 2023, Cumis sent an e-mail to the Plaintiff's counsel advising that, based on its investigation, there was valid insurance coverage through Desjardins. Cumis was also looking for the action to be discontinued against it.

[10] Exhibit "H" to the Plaintiff's supporting included a copy of an e-mail dated February 2, 2025, from Desjardins to the Plaintiff's counsel which acknowledges receipt of an e-mail dated February 1, 2023 (which was not included in any of the exhibits). The said e-mail also stated that, for privacy reasons, Desjardins could not release any information about its client. The said e-mail also stated that the "*incident is well past the limitation period*" and it provided an e-mail address to which further information could be sent. Though it was not referred to in the supporting affidavit, Exhibit "H" also included a

copy of an e-mail dated February 17, 2023, from the Plaintiff's counsel to Desjardins attaching a "courtesy copy" of the Statement of Claim, and which stated, in part,

"Pursuant to the Rules of Disclosure, your insured address is disclosable, Please either provide an address for service or advise if you will accept service on her behalf.

If you continue to refuse to provide an address for service, we will be forced to bring a Motion for substitutional service and will be seeking costs."

[11] The Plaintiff's supporting affidavit refers to several e-mails between his counsel and Desjardins, which took place on February 22, 2025, and although the affidavit states that they were attached as Exhibit "I", not all of them were, in fact, included.

[12] Copies of the e-mail correspondence which are included at Exhibits "I", "J" and "K" are somewhat repetitive and are not fully detailed in the affidavit. Nevertheless, from a review of the correspondence provided, it appears the following was the sequence of correspondence. On February 22, 2023, the Plaintiff's counsel once again demanded disclosure of the Defendant's address for service or that Desjardin accept service. The Plaintiff's counsel again threatened to bring a motion for substitutional service. Desjardins responded on February 23, 2023, acknowledging receipt of the police report and provided information about the policy limits, but did not confirm coverage. It also refused to accept service, and again, took the position that the limitation period had expired.

[13] On May 17, 2023, Cumis sent an e-mail to the Plaintiff's counsel advising that it only had the plate number for the other vehicle involved and the Hamilton police file

number. The Plaintiff's counsel responded by e-mail to Cumis stating that they would proceed *"with substitutional service on the insurance company."*

[14] The Plaintiff's supporting affidavit, which is sworn by a law clerk from the office of the Plaintiff's counsel, deposes that she attempted a search of the Defendant on Facebook. There is no indication of when that search was conducted. The deponent then stated that she *"...was unable to confirm the profile as that of the subject Defendant in this suit. The last post on that profile was in May 2022 and does not indicate the whereabouts of the Defendant."*

[15] At paragraph 5 of the Plaintiff's supporting affidavit, the deponent states that the Plaintiff's lawyer conducted a search of the plate number referred to in the aforesaid Self Reporting Collision Report, which search did not reveal an address for the Defendant. The deponent does not, however, state when that search was conducted, but a copy of it was included as Exhibit "B", It is dated April 29, 2025. This was almost three years after the claim was issued and more than two years after Desjardins advised the Plaintiff's counsel that it would not disclose any information about its insured and that it would not accept service of the claim.

[16] Apart from the efforts noted above, there is no evidence in the Plaintiff's materials that any other steps were taken find an address for service for the Defendant. Furthermore, there is no explanation by the Plaintiff for the delay in bringing this motion, which was approximately two years and eight months after being advised of Desjardins position.

[17] Paragraph 19 of the Plaintiff's supporting affidavit states that "*it is impracticable to effect prompt personal service of the Statement of Claim on the Defendant, May Southan*", but there is very little evidence to support such a statement.

[18] Likewise, at paragraph 20 of the Plaintiff's supporting affidavit, the deponent states that she is "*...not aware of any prejudice that the Defendants will suffer should this motion be allowed*", but nothing more with respect to prejudice.

[19] The factum filed by the Plaintiff also makes certain assertions which are not supported by the evidence filed. In particular, the factum makes a statement of linking the issues on this motion to the temporary suspension of the running of the limitation periods during the COVID 19 pandemic.

[20] In its response to the motion, the Defendant filed a supporting affidavit, sworn by counsel for Desjardins, which stated, among other things, that, at the time of the accident, the Defendant was insured by Certas Direct Insurance Company ("Certas") and that Certas first became aware of the Statement of Claim on February 17, 2023, when a copy of it was forward by Kelly Bulick, Claims Advisor. This appears to be the same person to whom the Plaintiff's counsel sent the "courtesy copy" of the Statement of Claim on February 17, 2023, as noted above.

[21] The responding materials also included copies of the Statement of Defence and Crossclaim of Cumis and Jury Notice by Cumis, each dated November 5, 2024, which were served on the Defendant.

[22] The responding party acknowledges having received some medical records from the Plaintiff on June 28, 2024.

[23] The responding affidavit also asserts that the Defendant's ability to defend has been prejudiced because of the length of time which has passed since the Statement of Claim should have been served but provides no particulars of the alleged prejudice.

ISSUES

[24] Whether the claim is statute-barred by virtue of the provisions of the *Limitations Act, 2002* was briefly raised by both parties. However, that issue will not be determined by this court and has no bearing on the issues on this motion.

[25] The only issues to be decided on this motion are the following:

Is the Plaintiff entitled to an order extending the time for the service of the Statement of Claim in these circumstances?

If the answer to i., above, is yes, is the plaintiff entitled to an order allowing it to serve the Statement of Claim upon the Defendant substitutionally by serving the Desjardins as requested?

ANALYSIS

Extending the Time for Service of the Statement of Claim

[26] Rule 14.08(1) of the *Rules of Civil Procedure* (the "*Rules*") requires that a statement of claim be served within six months after it is issued.

[27] The statement of claim in this case was issued on April 28, 2022. Therefore, it should have been served by October 28, 2022. It has yet to be served.

[28] The court, however, has the general discretion under Rule 3.02(1) to extend or abridge any time prescribed by the *Rules* on such terms as are just. The principles by which the court is to exercise such discretion is set out in the relevant case law.

[29] The leading case on a motion to extend the time for service of a statement of claim, which both parties cited in their factums, is the decision of the Ontario Court of Appeal in *Chiarelli v. Wiens*, (2000) 46 O.R. (3d) 780. In that case, there was a delay of over six years from the expiry date for serving the claim. The Court noted that, on such a motion the court should be mainly concerned with the rights of the litigants, not the conduct of counsel. Furthermore, the key issue on such a motion is whether the defendant would be prejudiced if an extension was granted.

[30] The evidence filed defendant in that case on the issue of prejudice was a general statement that it would suffer serious prejudice because of the passage of time. On this point, the Court of Appeal stated at paragraph 14:

Although the onus remains on the plaintiffs to show that the defendant will not be prejudiced by an extension, in the face of such a general allegation, the plaintiffs cannot be expected to speculate on what witnesses or records might be relevant to the defence and then attempt to show that these witnesses and records are still available or that their unavailability will not cause prejudice. It seems to me that if the defence is seriously claiming that it will be prejudiced by an extension it has at least an evidentiary obligation to provide some details. The defence did not do that in this case.

[31] The Court of Appeal also stated that the defence cannot create prejudice by its failure to do something that it reasonably could or ought to have done, and that

prejudice which will defeat a motion to extend the time must be caused by the delay.

Then, at paragraph 17 of the decision the Court of Appeal stated:

“The court should not fix in advance rules or guidelines when an extension should be refused. Each case should be decided on its facts, focusing as the motions judge did in this case, on whether the defence is prejudiced by the delay.”

[32] As noted above, the evidence filed by the Plaintiff on the issue of prejudice is far from extensive, but I note that the Defendant acknowledges having received a copy of the statement of claim on February 17, 2023, that it received some medical information from the Plaintiff, and that the parties have been discussing examinations for discovery.

[33] The Plaintiff’s explanation for the delay in attempting to serve the claim within the prescribed time is also not clear. The Plaintiff alleges that he only had the licence plate number of the other vehicle involved as set out in the Self Reporting Collision Report. Although the search of the licence plate did not disclose an address for the Defendant, there is no explanation of why that search was not conducted prior to April 29, 2025. Had such a search been conducted sooner, then the Plaintiff would have been sooner alerted to the issue and, perhaps, could have become sooner engaged in other efforts to locate the Defendant.

[34] The only evidence submitted by the Plaintiff of the other efforts taken to locate an address for the Defendant was unsuccessful search on Facebook. Rather than make any further effort to locate the Defendant, the Plaintiff’s efforts appeared to have been

directed to contacting Desjardins and attempting to get information about the Defendant from it and to attempting to get it to agree to accept service, both of which requests Desjardins repeatedly refused. There is also no explanation from the Plaintiff for the delay in bringing this motion after, as noted above, Desjardins made it very clear that it would not accept service of the claim

[35] The Defendant's evidence of prejudice is like the very general statement made by the defendant in *Chiarelli*. There is nothing more. The Defendant admits that the claim first came to her attention on February 17, 2023, when a copy was received by the Claims Advisor. As noted above, the Defendant also acknowledges having received some medical records from the Plaintiff and the parties have been discussing the scheduling of examinations for discovery.

[36] The Defendant drew the Court's attention to the cases of *Graff v. Sacrey*, 2018 ONSC 543 (SCJ) and *Noori v. Grewal*, 2011, ONSC 5213 (SCJ). In each case, the court dismissed the motion to extend the time for service.

[37] In *Graff*, the Court dismissed the motion because the plaintiff made a deliberate decision not to pursue one group of defendants, and there was actual prejudice.

[38] In *Noori*, the defendants were served with the claim well after the time prescribed by the *Rules* and, as such, notice of the claim was received 32 months after the collision. The Court found that the evidence reflected a "*continued and studied disregard of the Rules...*" by the plaintiff, that the plaintiff did not discharge the onus of

proving no prejudice would result from the order being granted, and that there was evidence of actual prejudice. The Defendant submits that, like *Noori*, notice of the claim came to the insurer's attention over 40 months after the accident, and therefore the Defendant has been prejudiced by the lost opportunity for an early investigation.

[39] There is nothing in the responding affidavit which states that the Defendant has been prejudiced by the lost opportunity for an early investigation, nor has it provided any details of prejudice.

[40] Leaving aside the issue of whether the Plaintiff made reasonable efforts to locate an address for service upon the Defendant, which will be discussed below, the Plaintiff does not currently have an address for the Defendant at which an attempt could be made to serve the claim. Furthermore, though this court has some concerns about the fulsomeness of the evidence filed by the Plaintiff, it cannot be said that the Plaintiff made a deliberate decision not to serve the Defendant. Therefore, the facts in this case are distinguishable from those in *Graff* and *Noori*.

[41] As stated in *Chiarelli*, the primary concern for the court on this motion should be the rights of the litigants. With that in mind, and the fact that there is no evidence of the Defendant having suffered any prejudice because of the delay, the extension of time for service of the statement of claim upon the Defendant for an additional 90 days from the date of this Order should be granted.

Substituted Service of the Statement of Claim

[42] Turning to the issue of whether the Plaintiff should be granted an order for substituted service of the Statement of Claim upon Desjardins, Rule 16.04 states:

“Where it appears to the court that it is impractical for any reason to effect prompt service of an originating process or any other document required to be served personally or by an alternative to personal service under these rules, the court may make an order for substituted service or, where necessary in the interest of justice, may dispense with service”

[43] The moving party is, therefore, required to demonstrate that it is impractical to effect prompt service of an originating process, and the court must be confident that the document will come to the party’s attention. Furthermore, there is no automatic right to an order for substituted service whenever the moving party experiences some difficulty, delay, expense or inconvenience in locating a party. (see: *Bigabo Mugunda v. Miller Richard*, 2025 ONSC 3836 (SCJ), at paragraphs 10 and 12 to 14 and *Laframbois v. Woodward* (2002), 59 O.R. (3d) 338 (SCJ) at paragraphs 6 to 10)

[44] As stated at paragraph 10 in *Laframbois*,

“The inability to serve a party personally is proved by showing that all reasonable steps have been taken to locate the party and to personally serve him or her. What is reasonable will depend on the nature of the case, the relief claimed, the amount involved and all the surrounding circumstances.”

[45] Once again, the evidence filed by the Plaintiff shows that the only attempts made to locate an address for the Defendant since the Statement of Claim was issued

was to conduct a license plate search and a search on Facebook. For example, there is no evidence that the Plaintiff engaged the services of a skip tracer.

[46] In my view, the Plaintiff has not taken all reasonable steps to locate the Defendant before seeking an order for substituted service. Therefore, this part of the Plaintiff's motion is dismissed. The Plaintiff is, however, not precluded from moving, once again, for relief pursuant to Rule 16.04, if he is unable to locate and serve the Defendant after making reasonable efforts to do so.

COSTS

[47] The Defendant has uploaded a bill of costs. The Plaintiff has not. I invite the parties to make written submissions on the issue of the costs of this motion. The written submissions should not exceed 5 pages in length and should be e-mailed to the Trial Co-ordinator on or before December 1, 2025.

Associate Justice J. Kriwetz

Released: November 24, 2025

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