

Citation: Lachapelle v. St. Laurent Automotive Group Inc., 2025 ONSC 579
Court File No. CV-20-00083872-0000

SUPERIOR COURT OF JUSTICE

B E T W E E N:

JESSE LACHAPELLE

Plaintiff

- and -

ST. LAURENT AUTOMOTIVE GROUP INC.

Defendant

R E A S O N S F O R D E C I S I O N

BY THE HONOURABLE JUSTICE P. ROGER
on January 21, 2025, at OTTAWA, Ontario

APPEARANCES:

S. Daria

Counsel for Plaintiff

R. Danesh

Counsel for Defendant

(i)
Table of Contents

**SUPERIOR COURT OF JUSTICE
T A B L E O F C O N T E N T S**

W I T N E S S E S

WITNESSES

Examination
in-Chief

Cross-
Examination

Re-
Examination

E X H I B I T S

EXHIBIT NUMBER

ENTERED ON PAGE

Reasons for Decision

1

Transcript Ordered:

January 21, 2025

Transcript Completed:

January 25, 2025

Ordering Party Notified:

January 27, 2025

1.
Reasons for Decision

TUESDAY, JANUARY 21, 2023

R E A S O N S F O R D E C I S I O N

5 Roger, J. (Orally):

Background Facts

10 The plaintiff brings this motion at the start of trial for procedural relief and for guidance from the court. Leave to bring this motion was not opposed and leave is granted because these issues arose after the action was set down for trial. Further, guidance is required before trial and the defendant did not bring evidence of or argue prejudice.

15 This is a wrongful dismissal action brought under the simplified procedure rule. It is proceeding as a summary trial.

20 The trial was initially scheduled for February 6, 2023. The February 6, 2023, date was adjourned to February 27, 2023, to allow the parties sufficient time to exchange affidavits. Thereafter, the start date of this trial was vacated and adjourned on three occasions (February 27, 2023, November 7, 2023, and February 20, 2024).

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30 As the trial was initially scheduled for February 6, 2023, the parties' affidavit of documents had been provided and examination for discovery had been conducted before that date. An urgent

Reasons for Decision

conference was requested and held on January 13, 2023, to discuss trial-related issues. An order was then made on consent of the parties adjourning the trial to February 27, 2023, to allow the parties time to exchange affidavits, and the following schedule was agreed upon:

- The plaintiff shall prepare a consolidated affidavit of documents and witness affidavits by February 3, 2023; and
- The defendant shall prepare, serve and post their materials by February 17, 2023.

The plaintiff served and filed his affidavits by February 3, 2023. Thereafter, on February 9 and 14, 2023, the defendant produced additional documents to the plaintiff, and on February 17, 2023, the defendant served a consolidated affidavit of documents which contained these new documents (these are found at Tabs 9, and 29 to 34 of that affidavit of documents – Tab 10 was previously in the plaintiff’s possession and is not argued for the purpose of this motion). As well, the defendant’s affidavit of documents contains a letter marked “Without prejudice” at Tab 18 and reference is made to the content of this document at paragraph 52 of one of the defendant’s affidavits. The defendant also included the discovery transcript of both parties in his affidavit of documents as well as both parties’ position on undertakings and advisements. The plaintiff also argues that the defendant’s affidavits contain hearsay and opinion, but agrees

3.
Reasons for Decision

that this can be dealt with during the course of this trial.

Issues

The issues are whether these documents should be struck from the defendant's documents and how best to deal with these procedural issues.

Analysis

Simplified procedure trials have their own specific practice, which is outlined at Rule 76 of the *Rules of Civil Procedure*. The simplified procedure practice is subject to the trial management plan agreed upon between the parties or ordered. Here, the agreed upon trial management plan provides, amongst others, that each party has 60 minutes "for confirmation of affidavit evidence and reading in evidence" from examination for discovery. Under Rule 76.12(1), the practice also allows for re-examination of the parties' witnesses and, with leave of the trial judge, the plaintiff may adduce any proper reply evidence.

Dealing first with the document found at Tab 18 of the defendant's affidavit of documents, and with paragraph 52 of the affidavit of John Mierins, I find that this document is presumptively protected by settlement privilege. The three preconditions are not disputed and are applicable. There is a dispute, the letter is marked without prejudice, and the purpose of the letter is to attempt to reach a settlement. However, I find that a

Reasons for Decision

competing public interest outweighs the public interest of encouraging settlement and, consequently, that the redacted version of this letter may be admissible.

The letter of May 25, 2020, is relevant to the defendant's position or defence that it constituted a resignation letter or a reason why the plaintiff's employment was terminated on a without cause basis. The admission of this letter is sought not to prove a concession by the plaintiff, but for a different purpose, that of explaining why the defendant terminated the plaintiff's employment. As such, this document is not only relevant to the defendant's defence, but, importantly, it is necessary for the court to assess the merits of the defendant's defence. In the circumstances of this case, a compelling public interest is consequently made out. I note further that in its redacted format, there is little or no prejudice to the plaintiff, and further that this may be addressed as required in the course of the evidence to be given by the parties, for example, during cross-examination or re-examination. As such, this case is a good example of an exception "when the justice of the case requires it" (see, for example, *Sable Offshore Energy Inc. v. Ameron International Corp*, [2013] 2 SCR 623). However, any reference to an amount shall be redacted from paragraph 52 of the affidavit of Mr. Mierins.

With regards to the documents at Tabs 9, and 29 to

Reasons for Decision

34 of the defendant's affidavit of documents, I find, with the exception of the document at Tab 31, which is a document from the Government of Ontario which could be subject to judicial notice, that these documents were produced late with no explanation why they could not have been produced in a timely manner. Consequently, these documents are not admissible irrespective of whether or not there is prejudice.

Both parties make reference to Rule 25.11 of the *Rules of Civil Procedure* as to when documents may be struck under that Rule. However, Rule 25.11 is more concerned or directed with issues of relevance and other related grounds than with the issue of lateness. Lateness requires something else that is not addressed at 25.11, it requires an explanation.

Timelines imposed by our *Rules of Civil Procedure*, by agreed upon timetables, and by orders be it on consent or opposed orders, are not mere suggestions. Parties are expected to make honest and meaningful efforts to comply, and failing to comply requires an explanation. See, for example, the decision in *Leblon Carpentry Inc. v. Q.H. Renovation & Construction Corp*, 2023 ONSC 3182. If an extension is opposed, an explanation must be provided.

The only evidence relating to the timeline on this motion is from an affidavit of a legal partner of counsel for the plaintiff, given in compliance with

Reasons for Decision

5 Rule 39.01(4), that it is implicit in the order of January 13, 2023, that no new documents were to be produced by the parties as all documentary evidence was required to have already been produced. This makes sense when I consider the endorsement of Justice Gomery, as she then was, made in the context of affidavits to be delivered for what was then thought to be a fast-approaching trial.

10 Consequently, the defendant was outside the timeline when these documents were first disclosed to the plaintiff and no explanation has been provided. To say that this is when these documents were first provided by your client is not an explanation because the question is why did the client not disclose these documents earlier or in a timely way.

15 The discovery transcripts and the charts of undertakings and refusals arising out of the examination for discovery of both parties should not have been attached to the defendant's affidavit of documents. Rule 34.18(4) provides that a transcript is filed only when a party refers to the transcript. However, this does not make any difference in a judge-alone trial and these documents do not have to be removed.

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30 With regards to the content of the parties' affidavits, I note that unlike affidavits on a motion or on an application, these are evidence at trial and must therefore strictly comply with the

Reasons for Decision

law of evidence. As indicated in *Lumberjacks Tree Services v. 407 East Construction General Partnership*, 2024 ONSC 1744, any objection to a trial affidavit should be made after the witness has testified and before the affidavit is tendered as an exhibit. Indeed, the witness may alter, correct, or elaborate on the content of his or her affidavit during their testimony.

The amendments to the Statement of Claim is going on consent and that amendment is allowed.

As per an exchange of email, counsel have agreed that costs will be addressed later, either during this trial or at some convenient time.

8.
Certification

FORM 3

ELECTRONIC CERTIFICATE OF TRANSCRIPT (SUBSECTION 5 (2))

Evidence Act

Elizabeth Walsh

I, _____,
(Name of Authorized Person)

certify that this document is a true and accurate transcript of the recording of

Lachapelle v. St. Laurent
Automotive Group Inc

Superior Court of Justice

(Name of Case)

(Name of Court)

held at _____
(Court Address)

161 Elgin Street, Ottawa, Ontario

taken from Recording _____, which has
been certified in Form 1.

0411_CR31_20250121_085701__6_
ROGERP

January 26, 2025
(Date)


(Electronic Signature of Authorized Person(s))

A certificate in Form 3 is admissible in evidence and is proof, in the absence of evidence to the contrary, that the transcript is a transcript of the certified recording of evidence and proceedings in the proceeding that is identified in the certificate