

CITATION: Biniaz-Sarabi v. Lakeridge Health Oshawa Hospital, 2025 ONSC 459
NEWMARKET COURT FILE NO.: CV-24-00000619 and
OSHAWA COURT FILE NOS.: CV-22-00000315, CV-22-00001632 and CV-24-00001243
DATE: 20250123

SUPERIOR COURT OF JUSTICE – ONTARIO

NEWMARKET COURT FILE NO.: CV-24-00000619

RE: Aynoush Biniaz-Sarabi, Plaintiff

AND:

Lakeridge Health Oshawa Hospital, Southlake Regional Health Centre, Lakeridge Health Ajax Hospital, Mackenzie Health Hospital, Gore Mutual Insurance Company, The Personal Insurance Company, Defendants

OSHAWA COURT FILE NO.: CV-22-00000315

AND RE: Aynoush Biniaz-sarabi, Plaintiff

AND:

Gore Mutual insurance company, Dr. Steven Baker, Miss Deena Rogozinsky, Miss Christina Kovacic, Mr. Peter Durant and Mr. Alex Kluchuk, Defendants

OSHAWA COURT FILE NO.: CV-22-00001632

AND RE: Aynoush Biniaz-sarabi, Plaintiff

AND:

Gore Mutual insurance company, Defendant

OSHAWA COURT FILE NO.: CV-24-00001243

AND RE: Aynoush Biniaz-Sarabi and Evangeline Biniaz-Sarabi, Plaintiffs

AND:

Farahani Professional Corporation, Himelfarb Proszanski (Personal Injury Lawyers), Landy Marr Kats LLP and Dr. George Vavougios, Defendants

BEFORE: The Hon. Justice S.E. Fraser

COUNSEL: Aynoush Biniaz-Sarabi, Self-Represented

Kim Dullet and Hilary Chung, Counsel for the Defendants, Lakeridge Health Oshawa Hospital Southlake Regional Health Centre, Lakeridge Health Ajax Hospital, and Mackenzie Health Hospital (CV-24-00000619)

Peter Durant, Counsel for the Defendant, Gore Mutual Insurance Company (CV-24-00000619, CV-22-00000315 and CV-22-00001632)

Anmol Shienh, Counsel for the Defendant, The Personal Insurance Company (CV-24-00000619)

Krista L. Springstead, Counsel for the Defendant Himelfarb, Prozanski (Personal Injury Lawyers) (CV-24-00001243)

Sam Rogers and Shanelle Dover, Counsel for the Defendant, Dr. George Vavougiou (CV-24-00001243)

Adam Pantel, Counsel for the Defendant, Landy Marr Kats LLP (CV-24-00001243)

HEARD: In Writing

ENDORSEMENT

I. Nature of the Motion

- [1] This is a Rule 2.1.01 decision concerning several proceedings commenced by the Plaintiff.
- [2] The Plaintiff was involved in a motor vehicle collision on October 24, 2017. She applied for accident benefits from Gore Mutual Assurance Company which initially paid benefits. Eventually, there was a denial of benefits. She applied to the Licence Appeal Tribunal (“LAT”) which denied requests for additional funding after a five-day hearing.
- [3] The Plaintiff appealed to the Divisional Court which on September 25, 2023, upheld the decision of the LAT and dismissed her appeal.
- [4] In the interim, the Plaintiff commenced this action (CV-24-00000619) against Gore, the Personal Insurance Company (“The Personal”) and several hospitals.
- [5] The Defendant, Gore Mutual Insurance Company (“Gore”), requested that this matter be placed before a judge pursuant to Rule 2.1.01(1) and asked that this Court dismiss this action under the Rule 2.1.01(1) as being frivolous, vexatious, and/or an abuse of process of the Court.
- [6] The Defendant referenced eight other matters and claims involving the same Plaintiff and three applications to the Ontario License Appeal Tribunal.

- [7] The claims referred to are:¹
- a. Court File No.: CV-22-00000315 (Oshawa)
 - b. Court File No.: CV-22-00001632 (Oshawa)
 - c. Court File No.: CV-23-00000287 (Oshawa)
 - d. Court File No.: CV-23-00002394 (Oshawa)
 - e. Court File No.: CV-23-00005710 (Newmarket)
 - f. Court File No.: CV-23-00005761 (Newmarket)
 - g. Court File No.: CV-24-00000282 (Oshawa)
 - h. Court File No.: CV-24-00001243 (Oshawa)
- [8] On May 31, 2024, I dismissed the action CV-23-5761 under Rule 2.1.01 as an abuse of process.
- [9] Because I received this second request relating to the same Plaintiff and who is alleged to have brought similar actions, I exercised my powers under Rule 2.1.01 to direct the Registrar to give notice in all the proceedings to advise that the court was considering making an order to stay or dismiss them as on their face they appear to be frivolous or vexatious or otherwise an abuse of process.
- [10] I directed the Registrar to provide me with the Statements of Claims.
- [11] I received submissions from the Plaintiff, The Personal Insurance Company, Gore Mutual Insurance Company, and the Defendant hospitals.
- [12] I have confirmed with the Registrar which files are inactive (i.e. have been discontinued) and in which Court they have been brought. In addition to this claim, the following claims remain active with the Court:
- a. Court File No.: CV-22-00000315 (Oshawa)
 - b. Court File No.: CV-22-00001632 (Oshawa)
 - c. Court File No.: CV-23-00000287 (Oshawa)
 - d. Court File No.: CV-24-00001243 (Oshawa)
- [13] The following are inactive:
- a. Court File No.: CV-23-00002394 (Oshawa)
 - b. Court File No.: CV-23-00005710 (Newmarket)
 - c. Court File No.: CV-24-00000282 (Oshawa)
- [14] I will address each of the active matters after addressing the legal framework.

¹ Corrections to the files referenced by Counsel have been underlined in the list reproduced in this Endorsement.

II. Law & Analysis

[15] I first address the principles under Rule 2.1.01, then the positions of the parties who have responded to the Notice, and then turn to how to apply the principles to this case.

A. *Rule 2.1.01*

[16] Under Rule 2.1.01, I may stay or dismiss a proceeding if on its face it appears to be frivolous or otherwise an abuse of the process of the Court. In *Scaduto v. The Law Society of Upper Canada*, 2015 ONCA 733, the Court of Appeal for Ontario, fully endorsed Justice Myers' approach to the Rule which he set out in *Gao v. Ontario WSIB*, 2014 ONSC 6100, at para. 9:

Rule 2.1 is not meant to apply to close calls. It is not a short form of summary judgment. But that does not mean that it is not to be robustly interpreted and applied. Where a proceeding appears on its face to meet the standards of frivolous, vexatious or an abuse of process, the court should be prepared to rigorously enforce the rule to nip the proceeding in the bud. Rigorous enforcement of this rule will not only protect respondents from incurring unrecoverable costs, but should positively contribute to access to justice by freeing up judicial and administrative resources that are so acutely needed to implement the “culture shift” mandated by the Supreme Court of Canada. The new rule tailors appropriate procedural fairness for the category of cases involved and is an example of early resolution of civil cases that is very much in line with the goals set out in *Hryniak*.

[17] The frivolous and vexatious nature must be clear from the proceeding.

[18] In *Gao v. Ontario WSIB*, 2014 ONSC 6497 (*Gao #2*), this Court reviewed the meaning and attributes of a frivolous and vexatious claim under s. 140 of the *Courts of Justice Act* and found those attributes to be applicable under Rule 2.1.01. These would include bringing multiple proceedings, rolling forward grounds from prior proceedings to repeat and supplement them, and bringing proceedings where no reasonable person would expect to obtain the relief sought.

B. *Application*

(a) This Action – Court File No. CV-24-00000619 (Newmarket)

[19] This action is brought against Gore, The Personal, and several Hospital Defendants. The Second as Amended Statement of Claim sets out that the Plaintiff seeks \$50,000,000.00 for damages alleged to have been sustained because of a motor vehicle accident.

[20] The claim states that the Plaintiff wishes to add her daughter and the physicians who she alleges have been negligent in the treatment of her and her daughter. It alleges that the

physicians did not do a comprehensive assessment and did not provide her with the treatment necessary for her recovery from the October 27, 2017 accident.

- [21] In respect of the Hospital Defendants, the Plaintiff states that the hospitals were named as Defendants in this claim because they failed to comply with the protocols to provide medical investigations and treatments that were required and necessary for her injuries and disorders.
- [22] The Defendant Gore argues that the Plaintiff is unhappy with the Divisional Court decision and that on the face of the various pleadings, there is no viable cause of action. It also seeks an order under s. 140(1) of the *Courts of Justice Act* declaring the Plaintiff a vexatious litigant and that there be no further proceedings.
- [23] The Defendant argues that this action discloses no clear cause of action. There is no explanation of the acts or omissions or what caused damage.
- [24] The Hospital Defendants allege that the Statement of Claim has been commenced outside of the two-year limitation period and that no claim can be made out.
- [25] The Personal submits that the Plaintiff's claim provides no allegations as against it. It argues that I should follow the reasoning of Justice Centa in *Bradley Court Limited v. Tinkasimire*, 2024 ONSC 2367. There, the court dismissed a claim as an abuse of process where the action lacked a legal basis or legal merit and has been brought without reasonable grounds.
- [26] I agree that there is no legal merit to the claim against The Personal as there are no allegations. Similarly, while the Plaintiff makes allegations against the treating physicians at various hospitals, the claim does not name any physicians and there is no discernable claim against the hospitals.
- [27] The claim against Gore reiterates the complaints made to the LAT and I find that this action is an attempt to re-litigate the issues argued at the Divisional Court.
- [28] I dismiss this action as it is brought without reasonable grounds, and it lacks a legal basis.

(b) Court File No. CV-23-00000287 (Oshawa)

- [29] The Plaintiff states that she has discontinued Court File No.: CV-23-00000287 (Oshawa) after learning that it is in the wrong jurisdiction, but it appears to remain active. There is no Statement of Claim, only a Notice of Action.
- [30] The Plaintiff has filed only a Notice of Action. No Statement of Claim was filed for the reason set out above. Thirty days have passed and therefore the Plaintiff would require leave or the consent of the Defendants to proceed further. There are no grounds to dismiss this proceeding under Rule 2.1.01.

(c) Court File No. CV-22-00000315 (Oshawa)

- [31] The Plaintiff states that she attempted to discontinue Court File No.: CV-22-00000315 but was unsuccessful at so doing. She asks that I stay or dismiss the action. The action is against Gore Mutual and several assessors and Peter Durant, a lawyer for Gore Mutual. Again, this action lacks legal merit and re-litigates matters already decided.
- [32] I dismiss it as an abuse of process and in accordance with the Plaintiff's request.

(d) Court File No. CV-22-00001632 (Oshawa)

- [33] The Plaintiff brings this action against Gore. The Statement of Claim alleges that Gore terminated the Plaintiff's benefits and neglected the outcome of insurer examinations, withheld insurer examination reports and essential documents and deprived her of rehabilitation and therapy services.
- [34] In my view, this claim is an attempt to re-litigate the denial of benefits by Gore. That is not permissible and it cannot proceed. The issues raised in this claim were the subject of a decision of the LAT, and a reconsideration decision and then a decision of the Divisional Court.
- [35] It is clearly an abuse of process and I dismiss it as such.

(e) Court File No. CV-24-00001243 (Oshawa)

- [36] This action names as Defendants Farahani Professional Corporation, Himelfarb Proszanski (Personal Injury Lawyers), Landy Marr Kats LLP and Dr. George Vavougiou. I received submissions from counsel for the Defendant Himelfarb Proszanski.
- [37] I am unable to discern the cause of action. The Plaintiff complains about matters that were decided by the LAT and the Divisional Court. As I can discern no basis for a cause of action from the claim, I dismiss the action under Rule 2.1.01.

C. Should the Plaintiff be Declared a Vexatious Litigant?

- [38] The Defendant Gore Mutual argues that the Plaintiff must be declared a vexatious litigant under s. 140 of the *Courts of Justice Act*. That motion must be brought on notice. It is not appropriate for me to consider my own motion under Rule 2.1.01. I confine my findings to this matter and the matters for which I have given notice under the Rule 2.1.01.

III. Order

- [39] In summary, I dismiss this action (CV-24-00000619 (Newmarket)) and Court File Nos.: CV-22-00000315 (Oshawa), CV-22-00001632 (Oshawa) and CV-24-00001243 (Oshawa). The Registrar shall place a copy of this Endorsement in each of those matters and transmit the Endorsement to the parties defending those actions.

[40] The Registrar shall also place a copy of this Endorsement in each of the following court files: CV-23-00000287 (Oshawa), CV-23-00002394 (Oshawa), CV-23-00005710 (Newmarket) and CV-24-00000282 (Oshawa).

Date: January 23, 2025

Justice S.E. Fraser