

CITATION: Caton v. Devecseri Estate, 2012 ONCA 6

DATE: 20120106  
DOCKET: C54091

COURT OF APPEAL FOR ONTARIO

Rosenberg, Simmons and Armstrong JJ.A.

BETWEEN

Jeremy Caton

Plaintiff

and

Keith Smockum, Litigation Administrator of the Estate of Steven Devecseri, Jeffrey  
Bradfield, Paul Latanski and Kingsway General Insurance Company

Defendants

(Appellant/Kingsway General Insurance Company)  
Respondent/Jeffrey Bradfield)

Brigette A. Morrison, for the Defendant (Appellant) Kingsway General Insurance  
Company

Michael Chadwick, for the Defendant (Respondent) Jeffrey Bradfield

Heard and released orally: January 3, 2012

On appeal from the order of Justice Christopher Corkery of the Superior Court of Justice,  
dated June 27, 2011 made at Peterborough, Ontario.

ENDORSEMENT

[1] The motion judge did not have the benefit of this court's decision in *Combined Air  
Mechanical Services Inc. v. Flesch*, 2011 ONCA 764. This was the type of case where

the application of the full appreciation test required that there be a trial. The case turned to a substantial degree on credibility and there were several important facts in dispute.

[2] We disagree with the respondent that this was a simple causation case. There was evidence capable of supporting a finding of a joint venture by the respondent and the deceased and the other riders of racing at highly excessive speeds and reckless driving, and of an implicit if not explicit agreement to continue the dangerous conduct. There was also evidence capable of supporting a finding that the respondent's failure to give way at the critical time contributed to the collision.

[3] Accordingly, the appeal is allowed, the judgment is set aside and the motion for summary judgment on liability is dismissed.

[4] The appellant is entitled to costs of the motion fixed at \$5,000 and of the appeal fixed at \$7,500, all inclusive of disbursements and applicable taxes.

Signed: "M. Rosenberg J.A."

"Simmons J.A."

"Armstrong J.A."