

# COURT OF APPEAL FOR ONTARIO

CITATION: Chaudhry v. A&B Auto Leasing & Car Rental Inc., 2012 ONCA 336

DATE: 20120518

DOCKET: C54766

MacPherson, Gillese and MacFarland JJ.A.

BETWEEN

Muhammad Naeem Chaudhry

Plaintiff (Appellant)

and

A&B Auto Leasing & Car Rental Inc. and Mohammad Rafiq and Shahzad Rafiq  
and Ayesa Rafiq and Haider Humza Inc.

Defendants (Respondents)

M. Doli and C. Nwobebe, for the appellant

M. Teitel, for the respondents Shahzad Rafiq, Ayesa Rafiq and Haider Humza Inc.

Heard: May 10, 2012

On appeal from the judgment of Justice Michael Dambrot of the Superior Court of Justice, dated December 8, 2011.

## APPEAL BOOK ENDORSEMENT

[1] Three of the defendants in this action, Shahzad Rafiq, Ayesa Rafiq and Haider Humza Inc., brought a motion to, among other things, strike out those portions of the amended Statement of Claim and Defence to Counterclaim that



bring into issue the validity of a \$275,000 judgment of Coe J. dated November 14, 2005. The motion was successful. The plaintiff appeals.

[2] The motion judge fully canvassed the facts, articulated the relevant legal principles and concluded that the circumstances cried out for the application of the doctrine of abuse of process. At para. 20 of his reasons for decision, the motion judge identified the following circumstance which, in his view, cried out for the application of the doctrine of abuse of process:

1. The issue had already been litigated twice.
2. The issue had already been raised in the plaintiff's pleadings in this case when the motion before Penny J. was heard.
3. The plaintiff was on notice that the issue was being litigated before Penny J., and he was invited to take steps to participate.
4. In [the motion judge's] view, it was highly likely that the plaintiff would have been granted standing as a person who would be affected by the order sought.
5. Despite being put on notice, the plaintiff declined to participate.
6. When the plaintiff declined to participate in the motion before Penny J., he had a clear intention of instead litigating the same issue again in this action.

[3] We agree. While it may be that the motion could also have been decided on the basis of estoppel, the motion judge made no error in deciding the motion on the doctrine of abuse of process.



[4] Accordingly, the appeal is dismissed with costs to the respondents Shahzad Rafiq, Ayesa Rafiq and Haider Humza Inc., fixed at \$9,000, all inclusive.