

COURT OF APPEAL FOR ONTARIO

CITATION: Hammond v. State Farm Automobile Insurance Company,
2012 ONCA 704
DATE: 20121019
DOCKET: C55047

O'Connor A.C.J.O., Goudge and Juriansz JJ.A.

BETWEEN

Kiera Hammond

Plaintiff/Appellant

and

State Farm Mutual Automobile Insurance Company

Defendant/Respondent

William G. Scott, for the plaintiff/appellant

Paul Pape, for the defendant/respondent

Heard and released orally: October 12, 2012

On appeal from the judgment of Justice A.C.R. Whitten of the Superior Court of Justice, dated January 23, 2012.

ENDORSEMENT

[1] This matter arose on a summary judgment motion. The appellant does not dispute the respondent's assertion that the parties asked the motion judge to make the necessary findings of fact. We proceed on the basis that the appropriate standard of review is palpable and overriding error with respect to the motion judge's findings of fact.

[2] The motion judge dismissed the appellant's claim on the basis that it was statute barred by a limitation period. The appellant commenced an action on August 17, 2007, claiming non-earner benefits under the Statutory Accident Benefits Schedule. The accident occurred on May 31, 1997. The motion judge found that the respondent insurer had denied the benefits on October 22, 2003.

[3] Section 281.1 of the *Insurance Act* requires that a court proceeding be commenced within two years after the insurer's refusal to pay the benefits claimed, and despite this within 90 days after the failure of mediation. Mediation in this case failed on June 29, 2004. The motion judge found the action was statute barred because the court proceeding was commenced some four years after the insurer's refusal and some three years after the failure of mediation.

[4] The appellant submits that the limitation period in s. 281.1(1) of the *Insurance Act* has not begun to run because the insurer has not complied with s. 49 of the SABS which requires the insurer, when giving notice of its refusal to provide benefits, to inform the claimant of the procedure for resolving disputes relating to benefits. The information required to be included is set out in the OCF-9 form.

[5] The motion judge found that the insurer's letter dated October 22, 2003, admittedly received by the appellant's lawyer, included the OCF-9 form. We agree with respondent's counsel that the motion judge did not accept the affidavit

filed by the appellant's then lawyer, because it baldly denied receipt of the OCF 9 form, on the basis that it had not been scanned by the law firms' staff. The motion judge also relied on the appellant's application for mediation and the evidence filed by the insurer in concluding proper notice was given. While the motion judge did go on to misunderstand some correspondence between the parties, we are of the view it did not animate his decision.

[6] The motion judge's conclusion was well supported by the evidence. This ground of appeal fails.

[7] The appellant accepts that notice to her lawyer constituted notice to the appellant.

[8] In the result, the appeal is dismissed with costs to the respondent fixed in the amount of \$6,000 all inclusive.

"D. O'Connor A.C.J.O."

"S.T. Goudge J.A."

"R.G. Juriansz J.A."