

COURT OF APPEAL FOR ONTARIO

CITATION: Biron v. Aviva Insurance Company, 2014 ONCA 558

DATE: 20140721

DOCKET: C58173

Hoy A.C.J.O., Gillese and Lauwers JJ.A.

BETWEEN

Cristian Biron

Appellant

and

Aviva Insurance Company and Sylvia M. Robin

Respondents

Cristian Biron, appearing in person

Kieran C. Dickson, for the respondents

Heard: July 18, 2014

On appeal from the order of Justice Jane A. Milanetti of the Superior Court of Justice, dated December 12, 2013.

ENDORSEMENT

[1] The motion judge dismissed the appellant's claim on the grounds that it is an abuse of process, and that it discloses no cause of action. The appeal is from that decision and the motion judge's costs award.

[2] The appellant was involved in a motor vehicle accident with a person insured by the respondent, Aviva. Aviva appointed the respondent, Sylvia M.

Robin to represent its insured at the small claims court action brought by the appellant to recover damages of \$550. The small claims court action was dismissed.

[3] The appellant took great offence at the trial tactics taken by Ms. Robin, and sued her for, as the motion judge expressed it:

a number of intentional torts, including breach of duty, non-compliance with the rules of the Small Claims Court, intrusion of privacy, infliction of mental distress. These are serious allegations without the pleading of material facts.

[4] The thrust of Mr. Biron's complaint is that Ms. Robin gave notice of an intention to rely on information that he claims was embarrassing and irrelevant. It turned out that the information and the document containing it were not relied on by the defence at the small claims court trial, but he claims that he was harmed nonetheless and that the mere prospect prevented him from pursuing his claim effectively.

[5] The motion judge found that this action amounts to an impermissible collateral attack on a decision of the small claims court. She observed that if the appellant had concerns about breaches of the small claims court rules, or the admissibility of documents, then he should have raised those issues in that court. (He conceded in argument that he had a copy of the offending report well before the small claims court hearing.)

[6] The motion judge held that the appellant's claim was blocked by the legal principle that, in litigation, opposing counsel owes no duty of care to the opposing party. This proposition is well known and was expressed by Karakatsanis J., as she then was, in *Admassu v. Pantel*, 2009 CarswellOnt 4047, at para. 5:

I am satisfied that it is plain and obvious that the pleading discloses no cause of action. Opposing counsel owes no general duty of care to the opposite party. As the court of appeal held in *Diamond Drilling Contracting Ltd. v. MacDearmid*, CanLII 24444, at para. 3, to hold otherwise would place solicitors in an untenable conflict between their duty to their client and their need to protect themselves against their client's adversary.

[7] In view of what the motion judge considered to be the appellant's abuse of process and his "serious allegations against a lawyer who was doing her job advocating on behalf of her client", she fixed costs in the amount of \$5,000.00, on a partial indemnity basis.

[8] We see no error in the motion judge's approach or in her conclusion that the action was an abuse of process, an impermissible collateral attack on the decision of another court, and disclosed no cause of action. We agree with her that Ms. Robin owed no duty to the appellant as a matter of law, and dismiss the appeal on the merits.

[9] No issue of principle is engaged by the motion judge's costs award, which is an exercise of her discretion. Leave to appeal costs is denied.

[10] Costs on the appeal are set at \$3,500.00, all inclusive.

“Alexandra Hoy A.C.J.O.”

“E.E. Gillese J.A.”

“P. Lauwers J.A.”