

COURT OF APPEAL FOR ONTARIO

CITATION: Brown v. Peel Mutual Insurance Company, 2018 ONCA 316

DATE: 20180327

DOCKET: M48807 (M43765)

Brown J.A. (Motion Judge)

BETWEEN

Sylviette Brown and Shawn Brown

Plaintiffs (Moving Parties)

and

Peel Mutual Insurance Company

Defendant (Responding Party)

Sylviette Brown, acting in person

Cynthia Verconich and Jessica Forester, for the responding party

Heard: March 21, 2018

ENDORSMENT

[1] The moving party, Sylviette Brown, moves to set aside the order of the Registrar dated January 24, 2018 dismissing for delay her motion for leave to appeal from the order of Healey J., sitting as a single judge of the Divisional Court, dated April 11, 2014. Healey J. dismissed Ms. Brown's appeal from an order of the Small Claims Court granting judgment in favour of Peel Mutual on its Defendant's Claim against her in the amount of \$14,833.77. In her decision, Healey J. also refused to allow Ms. Brown to seek judicial review of or to renew her effort to appeal

the dismissal of her Small Claims Court action against Peel Mutual Insurance Company.

[2] The history of the proceedings in the Small Claims Court and Divisional Court was summarized by Charney J. in his recent decision in a related action: 2018 ONSC 1346, at paras. 3-19.

[3] The principles governing a motion to set aside an administrative dismissal of a motion for leave to appeal are those set out in *Sickinger v. Sickinger*, 2017 ONCA 760 (In Chambers), at paras. 13-14.

[4] Reading Ms. Brown's materials in their entirety, I am not satisfied that she has provided an adequate explanation for not completing her motion for leave to appeal materials. Starting with Ms. Brown's attendance before Weiler J.A. on June 20, 2014, three judges of this court have touched this file at least five times. Several extensions of the time to complete the materials for her motion for leave to appeal were granted. Blair J.A. tried three times in Status Court to prompt Ms. Brown to complete her materials. To no avail.

[5] Although Ms. Brown is capable of putting together motion records and factums, as appears from the materials filed on this motion, she has failed to complete her materials for the leave to appeal motion, for no apparent reason.

[6] Ms. Brown asks for a further month to complete her leave to appeal materials. While I am satisfied that Ms. Brown has the ability to put the required

materials together, I have no confidence that she would do so if granted more time, given her delay of almost four years in moving this matter along.

[7] That delay constitutes real prejudice to Peel Mutual.

[8] Finally, the merits of Ms. Brown's proposed leave to appeal motion appear very weak as they do not satisfy the criteria set out in *Sault Dock Co. v. Sault Ste. Marie (City)*, [1973] 2 O.R. 479 (C.A.).

[9] Ms. Brown's motion to set aside the Registrar's administrative dismissal of her leave to appeal motion is dismissed.

[10] Ms. Brown shall pay Peel Mutual forthwith its costs of this motion fixed at \$1,000, inclusive of disbursements and HST.

"David Brown J.A."