

# COURT OF APPEAL FOR ONTARIO

CITATION: Sadat v. Pica, 2019 ONCA 186

DATE: 20190307

DOCKET: C65909

Feldman, Roberts and Fairburn JJ.A.

BETWEEN

Ahmed Fordjour Sadat

Plaintiff (Appellant)

and

Venessa Pica, Mary A. Pica, Lascelles A. Browney, Roberto Manco, Sabrina Manco, Nazar Kwarkies, Jian Lin, Jian Hing Supermarket Inc., Matthew Tersigni, Mary Tersigni, Nilamkumari C. Patel, John Doe and Certas Direct Insurance Company

Defendants (Respondents)

Ian Little, for the appellant

J.-C Rioux and Candace Mak, for the respondent Certas Direct Insurance Company

Mark Fonseca, for the respondents Jian Lin and Jian Hing Supermarket Inc.

Heard and released orally: March 4, 2019

On appeal from the judgment of Justice Michael G. Emery of the Superior Court of Justice, dated August 22, 2018.

## REASONS FOR DECISION

[1] This is an appeal from a decision granting summary judgment dismissing the action against the respondent insurer. The appellant was involved in a car

accident where his vehicle was struck from behind. The appellant has liability coverage under his own policy with the respondent insurer in accordance with s. 265 of the *Insurance Act*, R.S.O. 1990, c. I.8, and s. 5 of the standard Ontario motor vehicle liability policy on behalf of uninsured and unidentified automobiles. An unidentified automobile is defined in the Policy as one where either the owner or driver cannot be ascertained.

[2] The appellant argues that the motion judge erred by releasing the respondent from the claim for the uninsured or unidentified automobile coverage. He says that if the jury finds no liability on the part of either of the two driver defendants at trial, then he should be able to recover from the respondent because the jury's verdict will mean that the accident was caused by an unidentified automobile.

[3] The motion judge carefully analyzed the context for the appellant's claim. There is no dispute about the identity of the two other motorists involved in the accident: either Jian Lin or Venessa Pica was the driver responsible for the accident. There is no evidence that there was a third unidentified car and no one takes the position that there was. The sole question at trial will be which, if either, of the known vehicles or drivers was legally responsible for the accident. On that basis, the motion judge correctly dismissed the appellant's claim against the respondent because there is no alleged unidentified automobile.

[4] The appeal is dismissed.

“K. Feldman J.A.”

“L.B. Roberts J.A.”

“Fairburn J.A.”