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COURT OF APPEAL FOR ONTARIO

RE: ANTOINETTE MADDALONI and 2025225 ONTARIO LTD. (Plaintiffs/Appellant) – and ING GROUPE COMMERCE (Defendant/Respondent)

BEFORE: WEILER, SHARPE and BLAIR JJ.A.

COUNSEL: Christopher Morrison for the (plaintiffs/appellants)

E. Quigley for the (defendant/respondent)

HEARD: October 25, 2004

RELEASED ORALLY: October 25, 2004

On appeal from the order of Justice Paul Rouleau of the Superior Court of Appeal dated November 24, 2003.

ENDORSEMENT

[1] The appellant submits that the motions judge erred in failing to take into account Articles 68 and 69 of the *Quebec Code of Civil Procedure* that provide that an action on insurance policy may be instituted before the court of the domicile of the insured. In our view, Articles 68 and 69 of the *Quebec Code of Civil Procedure* are not relevant to the issue of *forum non conveniens* in Ontario. It is undisputed that Ontario has jurisdiction to entertain this action. Such jurisdiction being derived from the law of Ontario and not from the law of Quebec. The issue before the motions judge was *forum non conveniens* according to the law of Ontario.

[2] Nor do we accept the submissions that the motions judge failed to properly weigh the individual factor in the *forum non conveniens* test. After his detailed consideration of the eight factors and his careful review of the evidence pertaining to each factor, he concluded that the action had, at best, a tenuous connection to Ontario and that “this is a case whose connection is almost totally with the province of Quebec”. We are not persuaded that there is any basis upon which we could interfere with the exercise of his discretion.

[3] Nor do we see any basis upon which to interfere with the motions judge's award of costs.

[4] Accordingly, the appeal is dismissed.

[5] The respondent is entitled to its costs of the appeal fixed at \$3,500 inclusive of GST and disbursements.

“K.M. Weiler J.A.”
“Robert J. Sharpe J.A.”
“R.A. Blair J.A.”