

RULING ON MOTION

Salmers J.

Nature of the Motion

[1] With respect to the Third Party Claim, Squires has moved and requested that the jury notice be struck and that the trial of the Third Party Claim be heard by a judge sitting alone, without a jury.

[2] On June 2, 2010, I ruled that the Third Party, Echelon, was bound by the settlement of the Plaintiff and the Defendant Squires. The Third Party Claim is all that remains. The pith and substance of the Third Party Claim is whether Squires was covered by an insurance policy issued by Echelon.

The Parties' Positions

[3] Squires argued that the coverage issue was solely a claim for declaratory relief and accordingly, pursuant to section 108(2) of the *Courts of Justice Act*¹, the trial must be tried without a jury. In support of Squires' position, counsel referred me to *MacNeil (Litigation Guardian of) v. Bryan*².

[4] Echelon argued that, "...there are fact and credibility issues that must be assessed and considered by a Jury. The "pith and substance" of the relief requested is a factual determination on the question of whether a policy of insurance lapsed for failing to pay the required premium. In this case, a Jury can decide the "pith and substance" of the issues and then make a determination of the relief sought."³

Analysis

[5] This motion succeeds or fails based on whether the pith and substance of the relief sought in the Third Party Claim is declaratory relief as contemplated in s. 108(2) of the *Courts of Justice Act (CJA)*.

[6] The issue in this motion is not whether there should be bifurcation of claims or issues in an action. The issue in this case is whether the relief sought in the Third Party Claim is declaratory relief as contemplated in s. 108(2) of the *CJA*. That section provides that "issues of fact" in a claim for declaratory relief shall be tried without a jury. Notwithstanding that there may be factual issues that require determination in order to determine the coverage issue, if the pith and substance of the Third Party Claim is declaratory relief, then the trial of the Third Party Claim must be before a judge alone, without a jury.

¹ R.S.O. 1990, c. C 43

² [2009] O.J. No. 2344, S.C.J. (Howden J.)

³ Echelon's Factum, para. 5

[7] In this case's Third Party Claim, if it is determined that Squires was covered by an Echelon insurance policy, then Squires seeks from Echelon: 1) indemnity from Blanchette's claim; and 2) punitive damages.

[8] The coverage issue is a declaration of parties' rights and, as such, is a claim for declaratory relief. The amount of the Plaintiff's damages and contributory negligence have already been determined. If it is found that Squires is covered by an Echelon insurance policy, then the amount owing by Echelon to Squires for indemnity with respect to the Plaintiff's damages is predetermined and no further fact-finding or consideration and determination is required. In these circumstances, Squires' request for indemnity in the Third Party Claim is not a matter that requires any consideration and determination. Accordingly, the request for indemnity in this Third Party Claim does not alter the fact that the pith and substance of the Third Party Claim is a claim for declaratory relief. As stated earlier, pursuant to s. 108(2) of the *CJA*, the trial of a claim for declaratory relief must be without a jury.

[9] In the Third Party Claim, Squires also requested punitive damages. Those punitive damages, if any, arise out of Echelon's allegedly improper denial of coverage to Squires. Section 108(2) of the *CJA* mandates that the assessment of damages in respect of a claim for declaratory relief shall be tried without a jury. Accordingly, the fact that Squires requested punitive damages in this Third Party Claim does not alter the fact that the pith and substance of the Third Party Claim is a claim for declaratory relief, namely the coverage issue.

[10] For these reasons, Squires is successful on his motion. The trial of the Third Party Claim shall be before a judge, sitting alone without a jury.

[11] If the parties cannot agree on costs, then by October 15, 2010, Squires shall deliver a costs outline. Following that, Echelon shall deliver a costs outline by October 30, 2010.



Salmers J.

Released: September 21, 2010

CITATION: Blanchette v. Squires et al, 2010 ONSC 3643
COURT FILE NO.: 43034/06A
DATE: 2010-09-21

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

CHANTAL BLANCHETTE

Plaintiff

- and -

JODI SQUIRES, ESTATE OF CELESTIN
FORGET, also known as Steve Forget Deceased,
by his Estate Trustees, Martin Forget, Theresa
Charlebois and Rena Latone and AXA
INSURANCE, and/or Axa Insurance Canada

Defendants

- and -

ECHELON GENERAL INSURANCE COMPANY

Third Party

REASONS FOR RULING ON MOTION

Salmers, J.