

CITATION: Dhaliwal et al. v. Gill et al., 2022 ONSC 1445
COURT FILE NO.: File No. CV-17-1826-00
DATE: 2022 03 04

SUPERIOR COURT OF JUSTICE – ONTARIO

VARINDER SINGH DHALIWAL et al.

Plaintiffs

-and-

MANPREET SINGH GILL et al.

Defendants

COUNSEL: Sinjari Nergiz for the Plaintiffs

Surina Sud for the Defendants

HEARD: February 3, 2022 by Zoom conference

D. E. Harris J.

ENDORSEMENT

[1] The plaintiffs move for an order striking the jury notice of the defendant Gill on the basis that the Corporation of the Town of South Bruce Peninsula (the “town”) is a party to the litigation as both a named defendant and the subject of a third party claim.

[2] Section 108(2)(1)(xii) of the *Courts of Justice Act* R.S.O. 1990, c. C.43 prohibits jury trials where relief is sought against a municipality. Rule 47.02 of the *Rules* provides that a motion may be made to the court to strike out a jury notice on a ground that,

(a) a statute requires a trial without a jury; or (b) the jury notice was not delivered in accordance with Rule 47.0116. I would strike the jury notice in this instance.

[3] This is a tragic case. The plaintiff, Mr. Dhaliwal, 24 years old at the time, was a passenger in a car driven by Mr. Gill when it collided with another vehicle on July 6, 2014. The injuries to Mr. Dhaliwal were catastrophic and he has required 24/7 care as an in-patient at the Salvation Army Toronto Grace Health Centre. As he is uninsured, the Salvation Army has commenced a lawsuit seeking over a million dollars in damages for his continuing care.

[4] The two driver defendants, Mr. Gill and Mr. Karn, both testified at their discoveries that the view at the intersection in question was obscured by overgrown trees. The trimming of the trees falls under the jurisdiction of the town.

[5] The other defendants have agreed to the striking of the notice. The defendant Gill resists, while acknowledging--as he must--the black letter force of Section 108(2). He argues for a "conditional" striking of the jury notice. He seeks an order that if the town is still involved as a litigant in this action when this matter is called to trial, then the jury notice should be struck at that point.

[6] I do not agree and would order the notice to be struck now as requested by the plaintiffs. There is no reason of substance not to strike the notice. I am informed that there are currently "settlement discussions" which may result in the town no longer being in the litigation. Such a statement is vague and does not portend in any reliable way that

the town will drop out of the litigation. The eventuality that the town will no longer be a party in the proceedings is not secured by any tangible evidence and exists only in the realm of unanchored speculation. Instead, the logical presumption must be that the litigation will continue as per the *status quo* and the town will remain a party.

[7] It is unnecessary to analyze the caselaw in any depth. It is clear that the jury notice should be struck rather than waiting for a result which may never occur: *Louis v. Poitras*, 2021 ONCA 49, [2021] O.J. No. 354 (Ont. C.A.); *Safranyos et al. v McHugh and the City of Hamilton*, 2015 ONSC 6146 (Ont. Div), The Court of Appeal held in *Such v. Dominion Stores Ltd.*, 1961 CarswellOnt 198, [1961] O.R. 190, 26 D.L.R. (2d) 696 (Ont.C.A.) at para. 12,

There are certain classes of cases which by long established practice are not tried by juries in this Province. I mention, merely by way of example, actions for malpractice, actions involving scientific investigations and highly technical evidence and accounting actions. *When these issues appear in the pleadings, a Chambers Judge would almost as a matter of course, strike out a jury notice; in fact in such cases his order, in view of the well-settled practice, would hardly merit the epithet of discretionary.*

(Emphasis Added)

[8] The recent cases relied upon by the defendant in which a “wait and see” approach is taken to the striking of a jury notice are not analogous. Those cases examine jury notices in the context of the COVID pandemic, a time in which jury trials have been prohibited for lengthy periods of time. The judges order that the jury notices be struck but stipulate that the notice ought to be automatically reinstated if jury trials resume: *Mohan v. Howard*, 2021 ONSC 2064, at paras. 9, 16, 18; *Roszczka v. Tiwari*, 2021 ONSC 2372;

De Dieu v. Taylor, 2021 ONSC 3654; *McKee v. Marroquin*, ONSC 5400, at para. 45. Behind the approach taken is the concept that the right to a jury in a civil case is a substantive right and should not be taken away without good cause: *Cowles v. Balac et al.* (2006) 273 D.L.R. (4th) 596, 83 O.R. (3d) 660 (Ont. C.A.), at paras. 36–38, leave to appeal refused, [2006] S.C.C.A. Judges in the wait and see cases have done what they could to protect the right to a civil jury trial in the pandemic era.

[9] The situation is entirely different when a jury trial is prohibited by statute as it is here. There is no right to a jury trial in this instance. The conditional striking of the notice proposed by the defendant Gill stands the wait and see cases on their head. The request is essentially the opposite: do not strike the notice now but only strike it at the courtroom door if the town is still a party. That is directly contrary to the clear wording of the *Courts of Justice Act*.

[10] Moreover, allowing this trial to remain a jury trial would play an intolerable mischief with the scheduling process. The jury stream is much slower and more backlogged than the separate judge alone stream. If this case remains in the jury stream, it will not be heard until January 2024. The case is already 8 years old and would be 10 years old by then. The delay would confer an unfair tactical advantage on the defendant Gill and is contrary to the interests of justice.

[11] The jury notice will be struck.

[12] In terms of costs, there was little merit to the defendant's position. The costs requested are reasonable and proportionate. There was a previous attendance before Justice McSweeney on August 24, 2021 in which costs were reserved to this motion. I would order the defendant to pay the plaintiffs \$6,500.00 in costs all-inclusive within 30 days.

RELEASED: March 4, 2022

A handwritten signature in blue ink, appearing to be 'HARRIS J.', written over a horizontal line.

HARRIS J.

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