Citation: Henderson v The Manitoba Public Insurance Corporation, 2022 MBCA 57
Date: 20220621
Docket: AI21-30-09714

IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Holly C. Beard
Mr. Justice Christopher J. Mainella
Madam Justice Jennifer A. Pfuetzner

B E T W E E N:

	)	***T. M. Brown*** *and*
ALLAN HENDERSON	)	***H. B. Main***
	)	*for the Appellant*
(Plaintiff) Respondent	)	
	)	***J. A. Pollock***
- and -	)	*for the Respondent*
	)	
THE MANITOBA PUBLIC INSURANCE CORPORATION	)	*Appeal heard and Decision pronounced:*
	)	***June 10, 2022***
(Defendant) Appellant	)	
	)	*Written reasons:*
	)	***June 21, 2022***

BEARD JA (for the Court):

[1] The defendant, the Manitoba Public Insurance Corporation (MPI), is appealing the dismissal of its motion, based on rr 21.01(3)(a) and 25.11(1)(b) to 25.11(1)(d) of the MB, *Court of Queen's Bench Rules*, MR 553/88 (the *Rules*) relating to the availability of the remedy for damages. Its position for a dismissal of the "action" under r 21.01(3)(a) was that the Court lacked jurisdiction to award the damages requested. Its position for striking portions of the pleadings under rr 25.11(1)(b) to 25.11(1)(d) was that those portions are scandalous, an abuse of process and do not disclose a reasonable cause of action. We dismissed the appeal at the hearing, with brief reasons to follow. These are those reasons.

[2] The plaintiff, Mr. Henderson, purchased motor vehicle insurance from MPI. He was seriously injured in a motor vehicle accident in 2015, and has been receiving certain benefits, which include income replacement indemnity (IRI) benefits, since that time. These benefits are not payable under the insurance contract; rather, they are payable under Part 2 of *The Manitoba Public Insurance Corporation Act*, CCSM c P215 (the *Act*), which provides no-fault benefits to all Manitoba residents injured in a motor vehicle accident, who otherwise qualify.

[3] In his action, Mr. Henderson alleges that MPI breached its motor vehicle insurance contract with him and/or provided negligent advice to him when he purchased the insurance. He states that this resulted in him not purchasing additional insurance coverage, being IRI extension coverage, which would have increased his Part 2 IRI benefits. He alleges that he is entitled to damages as compensation for the amount of the benefits that he lost because he did not have the IRI extension coverage.

[4] The issues in this case are (i) whether MPI is liable for either breach of contract or negligence; (ii) if liability is found, whether the appropriate remedy is damages in an amount to be determined by a trial judge or a declaration and direction to MPI that his past and future IRI benefits should be increased to include IRI extension benefits; and (iii) if he is entitled to damages, the quantification of those damages.

[5] MPI agrees that the Court of Queen's Bench has jurisdiction to determine the liability issues. Its challenge relates to that Court's jurisdiction to award a remedy of damages based on the quantum of the unpaid IRI extension benefits, if liability is found.

[6] Rule 21.01(3)(a) of the *Rules* states as follows:

> **To defendant**
> **21.01(3)** A defendant may move before a judge to have an action stayed or dismissed on the ground that,
>
> > **Jurisdiction**
> > (a) the court has no jurisdiction over the subject matter of the action;

[7] We agree that it was incumbent on the motion judge to determine the essential character of the dispute (see *Goudie v Ottawa (City)*, 2003 SCC 14 at paras 2, 4), that is, what is at the "heart" of the dispute (*Shaw Cablesystems (SMB) Ltd et al v MTS Communications Inc et al*, 2006 MBCA 29 at para 65; see also para 64). We also agree that he was correct in concluding that the claim is one in tort and, as such, that the Court of Queen's Bench has jurisdiction over the subject matter of the action. (See *Fletcher v Manitoba Public Insurance Co*, [1990] 3 SCR 191.)

[8] Rule 21.01(3)(a) addresses the issue of whether an "action" should be dismissed because the Court has no jurisdiction over the "action". Having stated that it is "not seeking to strike the statement of claim in its entirety", acknowledged that a trial judge could find that MPI was "negligent or breached a contract," and limited its motion to the issue of the jurisdiction to grant a particular remedy, MPI has agreed that the Court has jurisdiction over the "action", the action being whether MPI was negligent or breached its contract with Mr. Henderson. This concession by MPI is consistent with the motion judge's finding, based on *Fletcher*, that the claim was not a claim of insurance.

[9] Because a trial judge has jurisdiction to determine the action, that is liability, the motion judge did not err in dismissing the motion under r 21.01(3)(a), which deals only with "jurisdiction over the subject matter of the action". The same finding would apply to r 25.11(1)(d), which states that the Court may strike out all or part of a pleading that "does not disclose a reasonable cause of action".

[10] MPI refers to two decisions in support of its position that r 21.01(3)(a) is available to strike out specific paragraphs within a claim. In both of those cases, the Court was asked to dismiss claims, being causes of action, in the pleadings. Those cases do not assist MPI as that is not the relief that it is requesting. (See *Chapman v 3M Canada Inc*, 1995 CarswellOnt 242 at paras 31, 48-49, (Ct J (Gen Div)), aff'd 1997 CarswellOnt 1014 (CA); *Johnston v Fraser*, 2004 SKQB 319 at paras 26, 33.) In those cases, specific paragraphs of the pleadings were struck because only some, but not all, of the causes of action were dismissed.

[11] In MPI's request for relief under r 25.11(1)(c) regarding abuse of process, the only precedent that is referenced is *Clifford v Her Majesty the Queen et al*, 2014 MBQB 192. Again, that case is dealing with a motion to strike the actions, not remedies (see paras 4-6).

[12] MPI argues that the application of the analytical framework in *Phillips v Harrison*, 2000 MBCA 150, leads to the conclusion that the Court does not have jurisdiction to award damages. First, we would note that the Court, in *Phillips*, was dealing with jurisdiction over an action, rather than over the remedy. MPI argues that the test in *Phillips* can be extended to situations where jurisdiction over a specific aspect of an action may fall

outside a court's jurisdiction, but it provides no jurisprudence to support that position. Further, this argument was not raised with the motion judge, so there is no decision for us to review. For these reasons, we are not prepared to accept that argument.

[13] Finally, the motion judge also made some comments about damages being determined by a trial judge. If the matter is not resolved before the trial, it will remain available for MPI to raise its argument regarding jurisdiction to grant damages as a remedy at trial, and/or to argue that the most appropriate remedy would be to make a declaration as to Mr. Henderson's entitlement and to defer the calculation and administration of that decision to MPI under Part 2 of the *Act* (see para 15).

[14] MPI also argues that the motion judge failed to provide sufficient reasons. The Supreme Court of Canada has recently repeated its admonition regarding the "importance of a functional and contextual reading of a trial judge's reasons" (*R v GF*, 2021 SCC 20 at para 69) and "of reviewing the record" (at para 70) when reasons are alleged to be insufficient. (See also para 69.) In our view, the reasons, when considered in the context of the arguments and the record, are adequate.

[15] For these reasons, we dismissed the appeal. Mr. Henderson will have his costs on the appeal in accordance with the tariff.

Beard JA

Mainella JA

Pfuetzner JA