

**CITATION:** Darteh v. Gross, 2017 ONSC 2479  
**COURT FILE NO.:** 15-0663  
**DATE:** 2017 04 21

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Godwin Darteh – and – Alana Gross

**BEFORE:** LeMay J.

**COUNSEL:** S. Pickering, Counsel for the Plaintiff  
J. D'Souza, Counsel for the Defendant

**HEARD:** April 20<sup>th</sup>, 2017

**ENDORSEMENT**

[1] This is a transfer motion brought by the Defendant to transfer this action from Barrie to Milton. The action is scheduled to proceed to a trial in Barrie next month. Discoveries have been completed, and mediation has also been attempted.

[2] The Defendant asserts that this action should be heard in Milton instead of Barrie. They argue that this case has no connection to Barrie other than the fact that Plaintiff's counsel is in Barrie. The Plaintiff asserts that the motion to transfer should be dismissed because the Plaintiff will be significantly prejudiced because of the loss of the trial date.

[3] For the reasons that follow, I am dismissing the motion to transfer without prejudice to the Defendant's right to resubmit this motion if the trial does not proceed in May of 2016.

### **Analysis**

[4] Under the current practice direction, the Regional Senior Judge or the designate in the region that the moving party is seeking to transfer the action to is responsible for considering the transfer motion. I have been designated by Daley R.S.J. to hear transfer motions for the Central West Region. A teleconference was held on April 20<sup>th</sup>, 2017 in this matter.

[5] Motions to transfer are governed by the principles in Rules 13.1.02(1) and 13.1.02(2), which state:

#### Motion to Transfer to Another County

**13.1.02 (1)** If subrule 13.1.01 (1) applies to a proceeding but a plaintiff or applicant commences it in another place, the court may, on its own initiative or on any party's motion, order that the proceeding be transferred to the county where it should have been commenced. O. Reg. 14/04, s. 10.

(2) If subrule (1) does not apply, the court may, on any party's motion, make an order to transfer the proceeding to a county other than the one where it was commenced, if the court is satisfied,

(a) that it is likely that a fair hearing cannot be held in the county where the proceeding was commenced; or

(b) that a transfer is desirable in the interest of justice, having regard to,

(i) where a substantial part of the events or omissions that gave rise to the claim occurred,

(ii) where a substantial part of the damages were sustained,

- (iii) where the subject-matter of the proceeding is or was located,
- (iv) any local community's interest in the subject-matter of the proceeding,
- (v) the convenience of the parties, the witnesses and the court,
- (vi) whether there are counterclaims, crossclaims, or third or subsequent party claims,
- (vii) any advantages or disadvantages of a particular place with respect to securing the just, most expeditious and least expensive determination of the proceeding on its merits,
- (viii) whether judges and court facilities are available at the other county, and
- (ix) any other relevant matter. O. Reg. 14/04, s. 10.

[6] Subsection (2)(a) does not apply in this case, as there is no evidence that a fair hearing cannot be held in Barrie. As a result, the principles set out in subsection 2(b) of the Rule apply in this case.

[7] I start with the observation that the Plaintiff has the right, at the outset, to choose which County she is going to bring her action in.

[8] If the choice that the Plaintiff makes is a reasonable venue for trial and the proposed venue is also a reasonable venue for the trial, then the Court will look at the factors holistically to determine which venue is a more reasonable location for the trial. On this point, see the decision in *Chatterson et. al. v. M&M Meat Shops Ltd.* (2014 ONSC 1897 (Div. Ct.)) as well as *Siemens Canada Ltd. V. Ottawa (City)* ((2008) 93 O.R. (3d) 220 (Ont. S.C.J.)).

[9] The Court will consider the list of factors in the Rule holistically. In doing so, the Court must consider the enumerated factors, including any other relevant matter, in order to decide whether the moving party has demonstrated that the transfer is desirable in the interest of justice.

[10] With respect to factors (i) to (iii) in the Rule, I note that this case involves a Motor Vehicle Accident. The Accident took place on the Queen Elizabeth Way near Trafalgar Road, which is in either Mississauga or Oakville. The Plaintiff lives in Toronto and the Defendant lives in Burlington. In these factors, there is no connection to Barrie.

[11] With respect to factor (iv) in the Rules, to the extent that any community is going to have a connection to this case, it is more likely to be either Peel or Halton Region as opposed to the Barrie/Simcoe area.

[12] In terms of factor (v), the Plaintiff's counsel will be advantaged by having the action remain in Barrie. I see no other party or witness who would be advantaged by having the action in Barrie as opposed to in Peel or Halton region.

[13] There are no other claims in this case, so factor (vi) is not relevant. I will return to factor (vii) below.

[14] This brings me to the state of the Court facilities in Milton. The Plaintiff argues that the court's facilities in Milton are such that the matter should not be transferred to Milton. In *2305769 Ontario Ltd. v. Youth Opportunities Unlimited* (2016 ONSC 4447), Daley RSJ set out the concerns with the facilities in Milton as follows:

32. As is widely known, the Milton courthouse is incapable of accommodating lengthy trials involving several counsel. There is simply not enough courtroom space available for trials such as this. The courtroom facilities in the Milton courthouse are overburdened and courtrooms are required on a day-to-day basis for family and criminal matters, and as such any available courtroom space cannot be reasonably allocated to a 4 to 5 week civil trial. Such an allocation would result in a significant **delay** in having urgent and pressing matters dealt with by the court in a timely manner.

33. Further, the court at Milton cannot accommodate a trial of this length at its regular sittings and further, given the number of counsel involved, and the length of the trial, if this case were to remain in Milton, there is a high likelihood that, with the consent and cooperation of the Regional Senior Judge in Central South Region, I would direct that the case be tried in Kitchener. This type of arrangement has been put in place with respect to previous cases pending in Central West Region with the approval of the Chief Justice of the Superior Court of Justice. Several trials, including criminal jury trials, have been transferred from judicial centers in Central West Region to Kitchener for trial in accordance with the Chief Justice's approval.

[15] I can confirm that the problems outlined in RSJ Daley's decision continue to exist, and will continue to exist for the foreseeable future. As a result, factor (viii) in the Rules clearly favours leaving the action in Barrie.

[16] However, in normal circumstances, this one factor would not be sufficient to prevent this motion to transfer from succeeding. On a review of the pleadings and of the facts outlined by the parties, it is clear that Milton would be a

substantially better venue for this action and I would normally order the transfer of this matter to Milton.

[17] I also note that, under factor (ix), the Defendant argued that this action should be in Milton because the parties agreed to move it there. In this case, the parties had significant discussions over changing the venue for this trial. They have considered Newmarket, Brampton and Milton. Ultimately, the Plaintiff would have been prepared to agree to have the matter transferred to Milton if the matter could still have proceeded to trial in the first half of 2016. While counsel for the Defendant argued that there was an agreement to move the matter to Milton, I am of the view that the Plaintiff's agreement in this regard was contingent on the preservation of the trial date.

[18] This brings me to the final factors, being the location that will ensure the just, most expeditious resolution of the matter (factor (vii)), and any other relevant matter. This case is on a trial list in Barrie, and is scheduled to proceed in May of this year.

[19] Defence counsel takes the position that this matter is not ready to proceed to trial, in part because his expert reports have not been completed. In submissions, the parties acknowledged that this matter was scheduled for trial by

MacKinnon J. in September of last year. However, no steps were taken by the Defendants to complete the expert reports until February of this year.

[20] Further, in terms of moving this matter, the Defendant has been dilatory in providing counsel with instructions. The transfer motion has been in the works for some months, and was only brought at the beginning of March.

[21] In light of these facts, I reach two conclusions. First, the just and most expeditious resolution of this matter favours leaving the case in Barrie for now. Second, the transfer motion is, in some respects, a thinly disguised adjournment motion. The proper place to seek an adjournment of this trial is in Barrie, or before the RSJ for the Central East Region.

[22] However, other than the impending trial date, there is no basis for this action to be in Barrie on the record that is before me. If the trial is adjourned, the transfer motion may be renewed.

### **Disposition and Order**

[23] The motion to transfer is dismissed without prejudice to renew it if the trial date in Barrie is adjourned.

[24] In light of my conclusions on this matter, costs of this motion are deferred to either the second hearing of the transfer motion if it arises and is contested, or to the trial judge if there is no further transfer motion.

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LeMay J.

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