

CITATION: Shen v. Lindbran Holdings Ltd o/a Canadian Tire, 2022 ONSC 364
COURT FILE NO.: CV-17-1728
DATE: 20220114

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Linyuan Shen, Plaintiff

AND:

Lindbran Holdings Ltd. o/a Canadian Tire and Rhonda Clarke and JMC Security & Investigations Inc., Defendants

BEFORE: D.A. Wilson J.

COUNSEL: *Brennan L. Kahler and Sherilyn J. Pickering*, for the Plaintiff

Andrea LeDrew, for the Defendants

HEARD: In Writing

ENDORSEMENT

[1] This claim was issued in Barrie in 2017 and claims damages for personal injuries sustained by the Plaintiff Mr. Shen as a result of an alleged assault that took place on November 9, 2016 at the Defendant Canadian Tire store. In August 2021, the Defendants brought a motion in writing seeking to transfer the action from Barrie to Toronto. There was an issue with the Court being able to access the materials, which resulted in a delay in reviewing the motion. I have read the motion record of the Defendants and the responding record filed by the Plaintiff.

History of the action

[2] After the Statement of Defence was delivered in 2018, examinations for discovery were held. The solicitor for the Plaintiff delivered the trial record in December 2019. A pretrial was held in Barrie before Justice Casullo. As a result of the pandemic and the fact that civil jury trials are not currently taking place in Barrie, the Plaintiff served a motion in June 2021 to strike the jury notice. It is unclear what the status of that motion is. On July 14, 2021, the solicitor for the Defendants wrote to Plaintiff's counsel to advise that they were bringing a motion to move the action to Toronto. The motion that is before me was served thereafter.

Position of the moving Defendants

[3] In support of its motion to move the case to Toronto, the Defendants submit that the action giving rise to this claim occurred in Toronto. Furthermore, the Plaintiff and the Defendant Clarke lives in Scarborough and the Defendant business is in Toronto. The Defendants submit that the majority of the witnesses live and/or work in Toronto and in sum, the balance of convenience favours Toronto.

Position of the responding Plaintiff

[4] The Plaintiff points out that the Defendants never raised the issue of moving the action to Toronto until after the Plaintiff brought its motion to strike the jury and the within motion is tactical. Counsel submits that it will take longer to get to trial in Toronto than it will in Barrie or alternatively, Newmarket. A number of the witnesses live in the GTA, so travelling to Barrie or Newmarket for the trial is likely equidistant to travelling to Toronto. Counsel notes that the psychologist Allan Walton has noted the Plaintiff is severely depressed, is not working, and it is in his best interests to have this action adjudicated as quickly as possible.

Analysis

[5] Rule 13 of the *Rules of Civil Procedure* governs the transfer of action to another place. Rule 13.1.02(2) sets out a list of factors the court may consider on a motion to transfer. In this case, the convenience of the parties and witnesses is split between Toronto and Central East, which judicial region includes both Barrie and Newmarket. In arriving at my decision, I have considered how quickly the trial will be heard. In my capacity as the lead judge in Toronto in charge of trials, this case would not be heard in 2022, given our current list of scheduled trials. There would therefore be a significant delay in securing a trial date if the action were moved to Toronto. The medical evidence that is included in the responding motion record indicates that it is in the best interests of the Plaintiff to have this action adjudicated in the most expeditious fashion possible.

[6] From a procedural perspective, it is unclear to me why the Defendants have brought this motion so late in the proceedings, I note that the Defendants did not plead in their Statement of Defence that the action properly should have been brought in Toronto. When the trial record was delivered and filed in the Courthouse in Barrie, defence counsel voiced no objection. Finally, when the pretrial conference was convened before Justice Casullo in July 2021, defence counsel did not take the position that the trial should be any place other than Barrie. In fact, Justice Casullo noted that counsel were ready for trial. There is nothing in the materials of the Defendants that speaks to the issue of the delay in bringing the motion to transfer the action to Toronto.

[7] Motions to transfer should be brought at an early stage in an action; there is no need to wait because counsel are aware of the various factors set out in Rule 13 certainly by the time of the examinations for discovery. Once an action is set down for trial on consent, leave is needed for a motion to be launched. Furthermore, it is expected by the Court that by the time an action is set down for trial and a pretrial is convened, all of the interlocutory matters have been dealt with.

Filing a trial record is an important step in an action for all parties. Here, the first time the issue of transferring the action was raised was after the pretrial conference was completed. Nothing in this action has changed from the time it was commenced. I am not persuaded that it is in the interests of justice to move this action to Toronto. The motion is dismissed. If counsel cannot agree on the issue of costs, I may be contacted.


D. A. Wilson J.

Date: January 14, 2022