

CITATION: Mohammed v. Goodship, 2009 ONCA 320
DATE: 20090417
DOCKET: M37426-C49528

COURT OF APPEAL FOR ONTARIO

Doherty, Cronk and Rouleau JJ.A.

BETWEEN:

Jameel Mohammed

Plaintiff (Appellant)

and

Richard Goodship and Canmils Consultant

Defendants (Respondents)

Jameel Mohammed, appearing in person

Thomas J. Hanrahan, for the respondents

Heard: April 16, 2009

On appeal from the order of Justice Sidney N. Lederman of the Superior Court of Justice dated August 1, 2008.

APPEAL BOOK ENDORSEMENT

[1] The motion judge erred in law in holding that the claim of negligent investigation could not possibly succeed. In our view, the viability of that cause of action is an open question in this province: see *Correia v. Canac Kitchens* (2008), 91 O.R. (3d) 353 at para. 66. It cannot be said on the present state of the law that the claim of negligent inspection is bound as a matter of law to fail.

[2] The appellant did not appear on the summary judgment motion. Without getting into the details of how that happened, we are satisfied that the motion judge's decision to proceed on his absence was predicated in part on the motion judge's assessment that the action could not, as a matter of law, succeed. It does not appear that the motion judge turned his mind to the adequacy of the pleadings and the plaintiff's material having decided that the cause of action did not exist.

[3] On the totality of the material before us (some of which was not before the motion judge), we think that the interests of justice are served by setting aside the dismissal of the action. The action can, therefore, proceed. The parties are, of course, entitled to take whatever steps are available to them under the Rules, including a summary judgment motion, if so advised.

[4] The appellant's motion to review the decision of Feldman J.A. is dismissed.

[5] There is no order as to costs.