

COURT OF APPEAL FOR ONTARIO

CITATION: Bonilla v. Preszler, 2016 ONCA 759

DATE: 20161017

DOCKET: C61951

Hoy A.C.J.O., Benotto and Huscroft JJ.A

BETWEEN

Glenda Bonilla

Plaintiff (Appellant)

and

Robert Philip Preszler, Preszler Law Firm and The Personal Insurance Company
of Canada

Defendants (Respondent)

Kevin Doan, for the appellant

Eric Grossman, for the respondent The Personal Insurance Company of Canada

Heard: October 6, 2016

On appeal from the order of Justice James F. Diamond of the Superior Court of Justice, dated February 29, 2016, with reasons reported at 2016 ONSC 1411.

ENDORSEMENT

[1] The motion judge granted summary judgment and dismissed the appellant's action against the respondent insurer for terminating the Income Replacement Benefits ("IRB") she had been receiving. The motion judge concluded that the appellant's action was barred by the two-year limitation period

established by the *Insurance Act*, R.S.O. 1990 c. I.8 and the *Statutory Accident Benefits Schedule - Accidents on or After November 1, 1996*, O. Reg. 403/96.

[2] The respondent informed the appellant on February 4, 2003 that it would not pay the IRB after February 27, 2003. The appellant was represented by counsel at the time and did not challenge the decision to end the IRB. The appellant retained new counsel in 2007 and commenced an action against her former lawyer for negligence and breach of fiduciary duty, and against the respondent for ending her IRB.

[3] The appellant commenced her proceeding for IRB by applying for mediation on April 3, 2008. The report of the mediator indicating that mediation had failed was dated December 11, 2008 and the appellant commenced her action against the respondent on December 12, 2008 – almost six years following the end of her IRB.

[4] The appellant does not contest the appropriateness of summary judgment.

[5] She raises two arguments on appeal. First, she argues that the respondent's termination notice was not clear and unequivocal, as required by *Smith v. Co-Operators General Insurance Co.*, 2002 SCC 30, [2002] 2 S.C.R. 129. Second, she contends that the motion judge erred in concluding that her action was time barred.

Was the termination notice clear and unequivocal?

[6] The motion judge found that the respondent sent two letters to the appellant indicating that it refused to pay her claim for benefits, the second of which was copied to her then lawyer. He found that “The message conveyed in the two letters was clear and unequivocal.”

[7] There is no basis to interfere with the motion judge’s finding. The appellant was aware that the IRB had been terminated, and in consultation with her then lawyer decided not to pursue the matter.

Is the action time barred?

[8] The appellant argues that the two-year limitation period is a rolling limitation period, such that each refusal to pay IRB sets a new two-year limitation term running.

[9] We disagree.

[10] It is well established in this court’s case law that the limitation period is triggered by a single event, which is the refusal of an insurer to pay the IRB claimed: see e.g. *Bonaccorso v. Optimum Insurance Company Inc.*, 2016 ONCA 34, 129 O.R. (3d) 544 and *Sietzema v. Economical Mutual Insurance Company*, 2014 ONCA 111, 118 O.R. (3d) 713. The appellant was informed on February 4, 2003 that she would not receive IRB after February 27, 2003. Even taking the later of these two dates, February 27, 2003, as the date of the refusal, the two-

year limitation period expired February 27, 2005. The appellant's action is several years late.

[11] The appellant submits that this court's prior cases are either distinguishable or are wrongly decided and offers several arguments in support. She submits that the limitation period covers only the amount of a benefit claimed, and not the nature of the benefit; that the cause of action for IRB is an "entitlement to indemnification"; that the amount claimed is limited to an amount accrued or crystallized, rather than future benefits; and that the common law discoverability rule applies.

[12] We do not accept any of these arguments. In our view the operation of the limitation period under the legislation is clear and straightforward. It is well settled in the case law of this court, and it would be inappropriate for a three-judge panel of the court to overrule a prior decision of the court in any event. We note that the appellant requested, and was denied, a five-judge panel for this appeal.

Disposition

[13] The appeal is dismissed.

[14] The respondent is entitled to its costs on the appeal, which we fix at \$8,500, inclusive of taxes and disbursements.

"Alexandra Hoy ACJO"
"M.L. Benotto J.A."
"Grant Huscroft J.A."