

CITATION: Robichaud v. McAulay, 2018 ONSC 3636
COURT FILE NO.: CV-14-00498203
MOTION HEARD: 20180516, 20180604

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Yvette Robichaud and Sandra McAulay, Plaintiffs

AND:

Kyriakos Constantinidis, Sofia Constantinidis and Coseco Insurance Company,
Defendants

BEFORE: Master B. McAfee

COUNSEL: T. Yang, Counsel for the Moving Party, the Defendant Coseco Insurance
Company

A. Sano, Counsel for the Responding Party, the Defendant Sofia Constantinidis

HEARD: May 16, 2018 and June 4, 2018

REASONS FOR DECISION

- [1] This is a motion brought by the defendant Coseco Insurance Company (Coseco) for an order pursuant to Rule 30.06(b) of the *Rules of Civil Procedure* requiring the defendant Sofia Constantinidis (Sofia) to serve a further and better affidavit of documents.
- [2] Sofia opposes the motion.
- [3] The action arises as a result of a motor vehicle accident that occurred on November 7, 2012. The defendant Kyriakos Constantinidis (Kyriakos) was operating a Mazda owned by his mother Sofia. The Mazda collided with the rear of a vehicle owned and operated by the plaintiff Yvette Robichaud (Robichaud).
- [4] Economical Mutual Insurance Company (Economical) is Sofia's insurer with respect to the Mazda. Economical has denied coverage to Kyriakos taking the position that Kyriakos did not have consent to operate the Mazda.
- [5] Coseco is the insurer of Robichaud and is a named defendant in this action pursuant to the uninsured, underinsured provisions of Robichaud's policy.
- [6] The documents now at issue on this motion are set out in the amended notice of motion. Coseco seeks an order that Sofia serve a further and better affidavit of documents listing in Schedule "A" the complete underwriting files of Economical with respect to all automobile policies of insurance issued to Sofia, Kyriakos, the non-party Dimitrios

Constantinidis (father of Kyriakos, spouse of Sofia) and/or the non-party Alexandra Constantinidis (daughter of Sofia and Dimitrios) (collectively the Constantinidis family). Coseco also seeks the complete broker file of Marathon Insurance Group (Marathon) with respect to all Constantinidis family vehicles where Marathon placed insurance with Economical including the Mazda, a Grand Am, a Dodge Ram truck and a Mercedes-Benz.

- [7] On the motion Sofia confirmed that no adjuster's files or claims files are sought.
- [8] Sofia has produced an incomplete portion of the underwriting file with respect to the policy of insurance issued to Sofia and covering the Mazda (policy no. 20018127P). The portion produced precedes the addition of the Mazda to the insurance policy and does not include underwriting notes or communications.
- [9] I am satisfied that Economical's underwriting file for the policy of insurance issued to Sofia with respect to the Mazda, to the extent the file has not yet been produced, is a relevant document that has been omitted from Sofia's affidavit of documents.
- [10] Whether Kyriakos had consent to operate the Mazda is an issue in this action. The plaintiffs plead that Kyriakos had consent to possession of the Mazda (paragraph 12 of the statement of claim). Sofia pleads that the Mazda was being operated by Kyriakos without her consent (paragraph 7 of Sofia's statement of defence and crossclaim). Coseco denies that the Mazda was uninsured (paragraph 25 of Coseco's statement of defence and crossclaim).
- [11] The underwriter would have confirmed which drivers were named as operators of the Mazda. The information in the underwriting file is relevant to the issue of consent to operate the Mazda.
- [12] I am also satisfied that the broker file of Marathon with respect to the Mazda is a relevant document that has been omitted from Sofia's affidavit of documents for the same reasons.
- [13] The underwriting file and broker file with respect to the policy issued to Sofia covering the Mazda shall be produced dating to January 14, 2013. Although I was not referred to specific evidence indicating that the documents were created for the dominant purpose of litigation, paragraph 11 of the affidavit of R. Love states that a notice letter dated January 14, 2013, was sent to Sofia. The files shall be produced dating to January 14, 2013.
- [14] On the motion I was not referred to evidence of the existence of a policy of insurance in the name of Alexandra, a non-party. On the motion I was not referred to evidence of the existence of a policy of insurance in the name of Kyriakos. I am not satisfied of the existence of an underwriting file or broker file with respect to any policies issued to Alexandra or Kyriakos.
- [15] The evidence before me is that at the time of the accident the household had three vehicles insured with Economical: the Mazda, a Dodge Ram truck and a Mercedes-Benz. As the Grand Am was not insured with Economical on the date of loss, I am not satisfied

of the relevance of the underwriting file or broker file with respect to the Grand Am. As the Dodge truck and the Mercedes-Benz were not involved in the accident, I am not satisfied of the relevance the underwriting file or broker file with respect to these vehicles.

[16] With respect to the issue of costs of the motion there was divided success on the motion. Sofia also seeks full indemnity costs regarding the original February 15, 2018 return date, which date was ultimately adjourned on consent. Coseco short served an amended notice of motion, forcing Sofia to respond to additional relief in less time than provided under the *Rules*. An agreement to adjourn was not immediately forthcoming from Coseco. However, the original return date was ultimately adjourned on consent without the need of Sofia attending. I am not satisfied of any costs thrown away or conduct that warrants a rare award of full indemnity costs. There shall be no costs of the motion.

[17] Order to go as follows:

1. Sofia shall serve a further and better affidavit of documents listing in Schedule “A” Economical’s underwriting file and Marathon’s broker file with respect to the Mazda, to the extent the files have not yet been produced dating to January 14, 2013.
2. There shall be no costs of the motion.

Master B. McAfee

Date: June 14, 2018