

Indexed as:

Ebrani v. Citadel General Assurance

Between
Ebrani, and
Citadel General Assurance

[1998] O.J. No. 6279
Court File No. 97-CV-137686SR

Ontario Court of Justice (General Division)
Toronto, Ontario
Lax J.

July 16, 1998.
(2 paras.)

Counsel:

J. Sebastain Winney, for the defendant (moving party)
Ted Charney, for the plaintiff (respondent)

¶ 1 **LAX J.**— On consent, order amending paragraph 1(a) of the statement of claim to add the words "but not to exceed \$25,000". This renders the defendant's motion moot and it is withdrawn. The defendant filed an amended notice of return of motion requesting an order that the plaintiff be required to attend for a defence medical examination by Ezra Silverstein, orthopedic surgeon. I agreed to hear the motion. I was referred to Rule 33, s. 105(2) of the Courts of Justice Act and the decision in *Crabtree v. MacKay*, 61 O.R. (2d) 669, (1987, Ont. Master) and *Bauer v. Fielding*, [1980] O.J. No. 754, (Ont. S.C., per Maloney J). I express no opinion on whether the Simplified Procedure under which this action is proceeding contemplates the application of Rule 33.02 and s. 105 of the Courts of Justice Act. Although argued that this was a request for a first defence medical, which courts routinely grant, the evidence does not support this. The plaintiff received disability payments for a number of years and was in receipt of benefits until 1997 when his benefits were terminated. In May 1997, the defendant offered to have the plaintiff assessed by an orthopedic surgeon, and without the benefit of counsel's advice, he went to see Dr. Michael Hall, orthopedic surgeon, in June 1997. There is no evidence before me as to why a medical examination is again required. There is no evidence the plaintiff's condition has changed. I am of the view that this is for all intents and purposes a request for a second medical examination, which is intended to corroborate the opinion of Dr. Hall: see *Lessar v. Radiak*, [1956] O.W.N. 479 (Ont. Master). I refuse the request.

¶ 2 The pleadings motion would have been entirely avoided and ultimately was consented to before the court. The defendant has been unsuccessful on the second motion. Costs to the plaintiff fixed at \$850.00 and payable in any event of the cause.

LAX J.

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