

**CITATION:** Stekel et al. v. Toyota Canada Inc., 2012 ONSC 2572  
**DIVISIONAL COURT FILE NO.:** DC - 00000012-19-00ML  
**COURT FILE NO:** 06-CV-309553 PD1  
**DATE:** 2012/04/27

**SUPERIOR COURT OF JUSTICE - ONTARIO**  
**DIVISIONAL COURT**

**RE:** KAREN STEKEL AND MAURICE STEKEL

v.

Plaintiffs

TOYOTA CANADA INC., 1216809 ONTARIO LIMITED  
c.o.b. as SCARBOROUGH LEXUS TOYOTA and  
TOYOTA CREDIT CANADA INC.

Defendants

**BEFORE:** Justice Moore

**COUNSEL:** Timothy Pinos and Jason Beitchman, for the Defendants/Applicants

Ted Charney, for the Plaintiffs/Respondents

**HEARD:** 23 April 2012

**ENDORSEMENT**

**Moore J.**

[1] At its essence, this is a personal injury action arising from a single car accident that occurred in Florida in April of 2005. At that time, Ms Stekel was operating a Lexus vehicle that her husband had leased in Toronto.

[2] The action was commenced in April 2006 against three Canadian companies alleged to have been responsible for the design, manufacture, leasing and/or maintenance of the Lexus and, as such, accountable to the Stekels for failing to locate and repair problems with the safe operation of the Lexus and thereby causing or contributing to the accident and resulting damages.

[3] The Statement of Claim alleged that the Lexus was designed and manufactured by Toyota Canada Inc (TCI). In its Statement of Defence delivered in February of 2007, TCI denied that it manufactured the Lexus and positively asserted that it was the exclusive distributor of Toyota automobiles and accessories, including the motor vehicle leased by Mr Stekel and operated by Ms Stekel. TCI did not plead or otherwise advise the Stekels or their counsel who manufactured the Lexus at that time and, prior to September 2008, no motion or examination for discovery process was initiated by the plaintiffs to ascertain the particulars of the manufacture of the Lexus.

Page: 2

[4] It appears that the first time that counsel focused on the issue of who actually designed and manufactured the Lexus came in September 2008 when, during the discovery of a TCI representative, plaintiffs' counsel learned that the Lexus was manufactured by TMC in Japan and that TCI asserted that the plaintiffs had sued the wrong party.

[5] The affidavit evidence of Jason Beitchman<sup>1</sup> confirms that TMC is at least a 50% owner of TCI. Whether or to what extent TMC owns or controls Mitsui & Co. Ltd, the company said to be a 50/50 joint venture owner of TCI, is not clear but the ownership interest of TMC is sufficient to make it a parent of TCI.

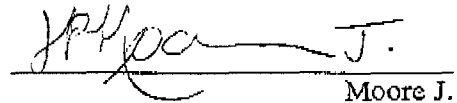
[6] The issue of adding TMC as a party defendant came before Master Abrams who determined that the appropriate order to make would add TMC as the manufacturer and amend the Statement of Claim. On that basis, the plaintiffs now plead that TMC is a corporation carrying on business in Toyota City, Japan and at all material times TMC carried on the business of designing and manufacturing automobiles and was the designer and manufacturer of the Plaintiff's motor vehicle.

[7] The Master's decision was appealed to K Campbell J who concluded that the Master did not err in permitting TMC to be added as a defendant to this litigation. He found that the Master applied the correct legal standard for "misnomer" and reached the correct conclusion. Leave to appeal to the Divisional Court is now sought.

[8] In order to succeed, TMC must establish that there is a conflicting decision by another judge or court in Ontario or elsewhere on the matter involved in the proposed appeal and it is, in the opinion of the judge hearing the motion, desirable that leave to appeal be granted. TMC has failed to persuade me on either branch of this test.

[9] Leave to appeal shall not be granted unless there appears to the judge hearing the motion good reason to doubt the correctness of the order in question and the proposed appeal involves matters of such importance that, in his or her opinion, leave to appeal should be granted. TMC has failed to persuade me on either branch of this test.

[10] The plaintiffs shall recover costs of this motion in the agreed upon amount of \$3,500.00.

  
Moore J.

DATE: 27 April 2012

<sup>1</sup> Motion Record, volume 2, Tab 15F3, page 404