

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** Ocean v Economical Mutual Insurance Company,  
2012 NSSC 144

**Date:** 20120425

**Docket:** Hfx No 190673

**Registry:** Halifax

**MAY OCEAN**, of White's Lake, in the Province of Nova Scotia

**Plaintiff**

**-and-**

**THE ECONOMICAL MUTUAL INSURANCE COMPANY**, a  
body corporate, registered to carry on business in the Province  
of Nova Scotia and **RAYMOND PATRICK SULLIVAN** of Lantz,  
in the Province of Nova Scotia.

**Defendants**

**Judge:** The Honourable Associate Chief Justice Deborah K. Smith

**Heard:** April 10<sup>th</sup>, 2012 in Halifax, Nova Scotia

**Oral Decision:** April 24<sup>th</sup>, 2012

**Written Decision:** April 25<sup>th</sup>, 2012

**Counsel:**

Robert G. Belliveau, Q.C. for the Defendant,  
The Economical Mutual Insurance Company.

May Ocean (Plaintiff – did not appear)

Raymond Patrick Sullivan (Defendant - attended but did  
not participate in this motion.)

**By the Court:**

[1] This is a motion to dismiss or strike out a negligence/bad faith claim that the Plaintiff has brought against the Economical Mutual Insurance Company (hereinafter referred to as “Economical”). The motion is brought pursuant to Civil Procedure Rules 88 and 45.

**BACKGROUND**

[2] The background relating to this case has been set out in a number of previous decisions but bears repeating here.

[3] On December 13<sup>th</sup>, 2000, the Plaintiff was involved in a motor vehicle accident with Raymond Patrick Sullivan. Mr. Sullivan was an uninsured motorist at the time of the collision. The Plaintiff was insured under a standard Nova Scotia automobile policy issued by Economical.

[4] On December 5<sup>th</sup>, 2002, the Plaintiff commenced an action in the Supreme Court of Nova Scotia against Economical and Mr. Sullivan. The action against Economical was for what is commonly known as a Section D claim. The action against Mr. Sullivan was for negligence.

[5] At the time of commencing the action the Plaintiff was represented by counsel. On August 30<sup>th</sup>, 2006, an Order was issued removing Ms. Ocean’s counsel as solicitor of record. Since that time, Ms. Ocean has been representing herself in this proceeding.

[6] In July of 2008 (more than seven years after the accident), Ms. Ocean applied to amend her Statement of Claim to include a negligence and bad faith claim against Economical for the manner in which they dealt with her claim following the collision. Economical opposed that application and filed an application to bifurcate the proceeding in the event that the Plaintiff’s application to amend her pleadings was granted.

[7] On July 31<sup>st</sup>, 2008, the Plaintiff was granted leave to amend her pleadings. On the same date, the court granted Economical’s application to bifurcate the issues raised in Ms. Ocean’s original Statement of Claim from those that arose as a result of her amended pleadings. A trial relating to the motor vehicle accident was to be held first,

followed by a trial relating to the negligence/bad faith claim brought by the Plaintiff against Economical.

[8] On September 10<sup>th</sup>, 2008, Economical applied for an order requiring Ms. Ocean to be assessed by an independent medical expert to determine her competency to represent herself in this proceeding. The application was granted (see 2008 NSSC 282.) This decision was subsequently overturned by the Court of Appeal (see 2009 NSCA 81.)

[9] On July 30<sup>th</sup>, 2010, the proceeding was trifurcated. In particular, the issue of damages was severed and was ordered to be heard after the two liability trials (see 2010 NSSC 314.)

[10] The first liability trial (dealing with the issue of liability for the motor vehicle accident and whether Economical was liable to Ms. Ocean under Section D of her automobile policy) was heard over twenty-five days between September 14<sup>th</sup>, 2010 and January 5<sup>th</sup>, 2011. Since the conclusion of this first trial, the court has been case managing the file in an attempt to move the second part of the proceeding on to trial.

[11] On April 29<sup>th</sup>, 2011, Economical applied to amend its defence to respond to the negligence and bad faith claim brought against it by the Plaintiff. Ms. Ocean objected to the amendment. On May 26<sup>th</sup>, 2011, an Order was issued granting Economical leave to amend its defence. Ms. Ocean was ordered to pay costs of that motion in the amount of one thousand dollars (\$1,000.00) payable forthwith. These costs have not been paid.

[12] On May 11<sup>th</sup>, 2011, Economical filed a motion seeking an order for a discovery examination of the Plaintiff in relation to the negligence/bad faith claim brought by Ms. Ocean. Evidence filed with the Court in support of that motion indicated that Ms. Ocean was not opposed *per se* to being discovered but she wanted it done on her terms. In correspondence that Ms. Ocean forwarded to Economical's solicitor dated March 31<sup>st</sup>, 2011, she stated:

As per your request re: discovery examination of me, I will make myself available the week of June 19, 2011. In regards to any Discovery, I fully intend to record the session(s) myself and as well, I demand that Economical provide both a recorded version and a hard copy version to me and to the court ASAP (fully paid for).

Under the dire circumstances of this case and legitimate concerns that I have re: Economical forming biases/golden handshakes with organizations such as Transcript/Recording Companies such as Drake Recording, I request that the Discovery Hearings as requested by Economical be conducted at the Courts and using their services.

[Emphasis in the original]

[13] In later correspondence (dated April 1<sup>st</sup>, 2011) Ms. Ocean indicated that she would not agree to a discovery examination until a number of issues were addressed. She objected, *inter alia*, to the idea of Economical or its solicitor choosing a recording service to record the discovery examination. She raised a number of other issues including the fact that she was not agreeable to having the discovery held at Mr. Belliveau's office. She indicated that she was open to suggestions as to how a discovery could proceed "having regard to her concerns" including ensuring that her "constitutional rights" were protected.

[14] Economical's motion for an order for discovery of Ms. Ocean was scheduled to be heard on June 10<sup>th</sup>, 2011.

[15] On May 31<sup>st</sup>, 2011, a decision was released in relation to the first liability trial (see 2011 NSSC 202.) Mr. Sullivan was found to be 80% liable and Ms. Ocean was found to be 20% liable for the collision that occurred on December 13<sup>th</sup>, 2000. In addition, Economical was found liable to pay Ms. Ocean the amount that she is entitled to recover from Mr. Sullivan (to be determined) as damages for bodily injuries resulting from the motor vehicle accident up to a maximum of two hundred thousand dollars (\$200,000.00.) Both Ms. Ocean and Economical appealed that decision.

[16] As indicated previously, Economical's motion for an order for a discovery examination of the Plaintiff was scheduled to be heard on June 10<sup>th</sup>, 2011. That day, Ms. Ocean filed a letter with the court indicating that she would not be attending as emergency matters required her to leave the province. Her letter concluded with the following paragraph:

Until which time I take these matters to the Appeal Court and as per my Civil Rights and Freedoms which guarantee me protection from harm and cruel and unusual punishment, I forthright refuse [to] acknowledge and/or partake in any trial proceedings with this lower court – ACJ Smith and Defendant Parties. Proceedings such as what has transpired before a Trial Decision was even rendered, I now know to be another means in which to try and set me up so that my demise can be arranged

in such a way that it appears Economical and their affiliates within the Insurance/legal/Judicial conglomerate are not involved. It is easy to see that such an illegal, ruthless and powerful conglomerate would not want the depth of these atrocities more fully revealed.

[17] It is useful, at this stage, to know that the Plaintiff alleges that Economical is involved in monopolistic and “conglomerate” activity. She regularly speaks of a “golden handshake” which she believes exists between Economical and various other entities involved in this litigation, including the Court.

[18] That same day (June 10<sup>th</sup>, 2011) a letter was sent to Ms. Ocean from the court in which it was stated:

Please be advised that the hearing of Economical’s motion [for discovery of the Plaintiff] has been set over until Friday, June 17<sup>th</sup>, 2011 at 9:30 a.m. (at the Law Courts, 1815 Upper Water Street, Halifax, NS B3J 1S7.) I strongly encourage you to attend at that time and wish to advise that **the Court will be proceeding in your absence** if you fail to appear. I also encourage you to bring a support person with you when you attend.

[19] On June 14<sup>th</sup>, 2011, Ms. Ocean forwarded a further letter to the court in which she stated:

In reply to your letter dated June 10, 2011. I believe that I have stated myself clearly enough in my previous letter of June 10, 2001 [sic], however I will offer specifics.

It is fully evident that you are biased and that a “golden handshake” exists between you, Economical and other monopolizing Insurance Companies and as such you are an integral part of the conglomerate web that I claim. This is the driving force behind decisions you have made in the past, are making now and will make in the future. Despite the fact that I did once hold out a slim hope that this was not the case, I have expressed that I consider many of your actions to be highly suspicious.

The above claim, and in lieu of my constitutional rights, is justifiable for me to refuse attendance as demanded in your recent letter. As it is my right NOT to be subjected to cruel and unusual punishment, then I am counting on that right and first law to be there for me at this time when I need it the most. This case has been such that I have been subjected to abuse from all parties in the past and it is likely that I would continue even today except that priorities, some of which I list below make it impossible for me to meet your demands.

[20] Ms. Ocean then referred to a number of additional events that she said prevented her from participating further in this proceeding. These included her need to focus on her appeal and her need to assist her ill mother, as well as her partner.

[21] Ms. Ocean's June 14<sup>th</sup>, 2011 letter is attached to Mr. Belliveau's affidavit sworn to August 3<sup>rd</sup>, 2011. Also attached to that affidavit is a copy of Ms. Ocean's Notice of Appeal filed in relation to the Court's May 31<sup>st</sup>, 2011, decision. Paragraph 20 of that Notice of Appeal reads:

20. THAT due to abusive and illegal undertakings leading up to and during the first trial, I have been left with no other recourse but to remove myself from further proceedings in regards to this case Hfx. No 190673 now before the Supreme Court so as to protect myself from further harm as afforded by my civil rights and freedoms in our constitutional democracy.

[22] On July 5<sup>th</sup>, 2011, Economical filed a Notice of Motion seeking security for costs in the amount of one hundred thousand dollars (\$100,000.00) in relation to the negligence/bad faith claim advanced by the Plaintiff. That motion was heard on September 9<sup>th</sup>, 2011. Ms. Ocean was served with notice of the motion but did not file any materials in response, nor did she attend for the hearing of the matter.

[23] On November 10<sup>th</sup>, 2011, a decision was released requiring the Plaintiff to post security for costs in the amount of ten thousand dollars (\$10,000.00) by way of deposit with the prothonotary of the Supreme Court or such other form of security as was acceptable to Economical. This security was to be posted on or before the 1<sup>st</sup> day of February, 2012. An Order to this effect was issued on November 25<sup>th</sup>, 2011. Ms. Ocean has not complied with this Order.

[24] According to Mr. Belliveau's affidavit sworn to on March 9<sup>th</sup>, 2012, the Plaintiff applied for leave to proceed with her appeal of the Court's liability decision (2011 NSSC 202) without a transcript of the trial. This motion was dismissed (see 2011 NSCA 106.)

[25] By Order dated March 7<sup>th</sup>, 2012, Fichaud, J.A., on a motion by the Registrar, dismissed the Plaintiff's appeal of the liability decision. By consent, Economical's cross-appeal was also dismissed. It appears from the Court of Appeal's Order that Ms. Ocean did not appear for the hearing of that matter despite notice having been sent to her designated address for delivery of documents.

[26] On March 7<sup>th</sup>, 2012, Economical's solicitor sent correspondence to this Court seeking a date for a motion to strike the Plaintiff's negligence/bad faith claim. The next day, Ms. Ocean sent to the Court and to Mr. Belliveau a copy of an email that was apparently directed to her bookkeeper. This email includes the following:

I'm forwarding the attached letter sent to me yesterday from Economical's Lawyers. As you can see by the letter, the Judge requires me to make a deposit of \$10,000., which of course I don't have, hence Economical is now attempting to have my case dismissed.

My recent attempt to appeal the Judges trial decision was dismissed by the Appeal Court because I didn't provide financial documentation to support what I claim: that my income is inadequate, that I have no savings/investments/etc, that my partner's income puts me above the income bracket for assistance, and that OceanArt is near bankrupt (largely in part due to corruption existing within the insurance/judicial system--golden handshake between the Judge and the defendant parties). Even though the lack of money is a factor in my not being able to adequately move forward with my case, I have made it abundantly clear in previous letters to concerned parties that based on evidence of corruption observed at the previous trial (and pre trial events) I will NOT attend any meeting with this judge and defendant parties and be submitted to further abuse and so I refuse to partake on the grounds that it is wholly against my constitutional rights and freedoms.

I will attempt the Appeal Court route once again.....

[Emphasis in the original]

[27] On March 20<sup>th</sup>, 2012, Economical filed a Notice of Motion seeking an order pursuant to Civil Procedure Rule 88 striking the Plaintiff's negligence/bad faith claim against Economical. The Notice also refers to Civil Procedure Rule 45. Ms. Ocean was served with notice of this motion but did not file any materials in response, nor did she attend for the hearing of the motion.

## **LAW AND ANALYSIS**

[28] Economical has framed its motion primarily under Civil Procedure Rule 88 which provides:

### **Scope of Rule 88**

**88.01** (1) These Rules do not diminish the inherent authority of a judge to control an abuse of the court's processes.

- (2) This Rule does not limit the varieties of conduct that may amount to an abuse or the remedies that may be provided in response to an abuse.
- (3) This Rule provides procedure for controlling abuse.

### **Remedies for abuse**

- 88.02** (1) A judge who is satisfied that a process of the court is abused may provide a remedy that is likely to control the abuse, including any of the following:
- (a) an order for dismissal or judgment;
  - (b) a permanent stay of a proceeding, or of the prosecution of a claim in a proceeding;
  - (c) a conditional stay of a proceeding, or of the prosecution of a claim in a proceeding;
  - (d) an order to indemnify each other party for losses resulting from the abuse;
  - (e) an order striking or amending a pleading;
  - (f) an order expunging an affidavit or other court document or requiring it to be sealed;
  - (g) an injunction preventing a party from taking a step in a proceeding, such as making a motion for a stated kind of order, without permission of a judge;
  - (h) any other injunction that tends to prevent further abuse.
- (2) A person who wishes to make a motion under section 45B of the *Judicature Act* may do so by motion in an allegedly vexatious proceeding or a proceeding allegedly conducted in a vexatious manner, or by application if there is not such outstanding proceeding.  
 .....

[29] Economical has also made reference to Civil Procedure Rule 45.04(1) which provides:

### **Stay and dismissal**



- 45.04** (1) An order for security for costs stays the proceeding, or that part of the proceeding for which the security is due, until the security is given or the claim is dismissed.

.....

[30] At the hearing of the motion, Mr. Belliveau confirmed that Economical is also relying on Civil Procedure Rule 45.04(3) which provides:

**Stay and dismissal**

**45.04** .....

- (3) A party who obtains an order for security for costs may make a motion for dismissal of the claim if the party ordered to provide security fails to do so as ordered.

[31] I will begin my analysis with a consideration of Civil Procedure Rule 45.04(3). This Rule deals directly with the circumstances at hand. That is – the Court has ordered the Plaintiff to post security for costs by February 1<sup>st</sup>, 2012 and the Plaintiff has failed to do so.

[32] I have not been referred to any cases that deal with *Civil Procedure Rule* 45.04(3) or its predecessor (C.P.R. 42.02(3)).

[33] I have found and have referred the parties to four cases that involved motions to dismiss *an appeal* for failure to provide security for costs (see **MacCulloch (Bankrupt), Re** (1990), 100 N.S.R. (2d) 89 (N.S.S.C. A.D.); **NsC Diesel Power Inc. (Bankrupt), Re** (1994), 137 N.S.R. (2d) 37 (C.A.); **MacGillivray v. Smith**, 2003 NSCA 113 and **MacDonald v. Jollymore**, 2007 NSCA 46.) I have considered these cases when arriving at my decision recognizing that they would have been decided under the rule relating to security for costs on appeal and also recognizing that in each of those cases a hearing had already been held on the merits of the action. In other words, it was an appeal that a party was seeking to dismiss, not an action before a hearing was held on the merits. Nevertheless, I have found these cases to be instructive when considering this motion.

[34] Civil Procedure Rule 45.04(3) provides for an exceptional remedy. It permits a claim to be dismissed without a hearing on the merits, if a party ordered to provide

security for costs has failed to do so. Because a litigant may be denied a hearing of his/her claim on its merits it is, in my view, important that the court consider the overall circumstances of the case when deciding whether to dismiss an action. There may be circumstances where a continued stay is warranted for a period of time rather than the more draconian remedy of dismissal.

[35] As indicated above, at the present time the Plaintiff is in breach of two court orders relating to costs. The first is the Order of Justice Coughlan dated May 26<sup>th</sup>, 2011 in which Ms. Ocean was ordered to pay costs of one thousand dollars (\$1,000.00), payable forthwith. The second is the Order issued November 25<sup>th</sup>, 2011 requiring Ms. Ocean to post security for costs in the amount of ten thousand dollars (\$10,000.00) by the 1<sup>st</sup> day of February, 2012. Neither of these Orders have been complied with.

[36] In addition, the Court is faced with a unique situation in which the Plaintiff refuses to participate (at least at this level of court) in an action which she, herself, has commenced.

[37] The Plaintiff's claim against Economical for negligence/bad faith arises out of conduct that is alleged to have occurred over a decade ago. Many years after the Plaintiff's original Statement of Claim was filed she sought, and was granted leave to amend her pleadings to include this claim. Despite being given the opportunity to advance her claim, the Plaintiff now refuses to do so.

[38] Ms. Ocean has not attended in this Court since May of 2011 when Economical's motion to amend its defence was heard and granted. She was served with notice of Economical's motion for an order for her discovery examination; she was served with notice of Economical's motion for Security for Costs and she was served with notice of this motion to dismiss a portion of her claim. Economical continues to return to court to deal with this proceeding but the Plaintiff – the Party that has commenced the action – repeatedly refuses to attend.

[39] The Plaintiff's failure to comply with the Court's orders relating to costs and her refusal to participate in her own action undermines the integrity of the judicial system and, in my view, brings the administration of justice into disrepute.

[40] The object of our Civil Procedure Rules is to bring about the just, speedy and inexpensive resolution of disputes (see Civil Procedure Rule 1.01.)

[41] There is, in my view, nothing just about allowing a party to continue a proceeding that she refuses to participate in.

[42] Further, there is nothing speedy about a claim that has not yet reached the discovery stage despite the fact that the cause of action arose over a decade ago.

[43] Finally, this proceeding has been anything but inexpensive. The cost to the system and to the parties has been significant.

[44] The relief requested by Economical is extreme in the sense that it will put an end to the Plaintiff's claim against this Defendant for negligence and bad faith. In my view, there is no lesser remedy that will bring about a proper result.

[45] I am satisfied that the Plaintiff's failure to post security for costs, viewed in the context of the entire situation, warrants an order dismissing her claim against Economical for negligence and bad faith.

[46] I appreciate that the relief that I am granting is extraordinary. So are the circumstances of this case.

[47] In light of my conclusion in relation to Rule 45.04(3), it is unnecessary for me to consider whether it would be appropriate to strike out this portion of the Plaintiff's claim pursuant to Civil Procedure Rule 88.

[48] Mr. Belliveau seeks costs of this motion in the amount of \$3,500.00 plus disbursements of \$444.78. He has indicated that he seeking costs of \$500.00 under Tariff C and additional costs of \$3,000.00 (with regard to the dismissal of the claim) under Tariff F.

[49] Tariff F deals with the costs of a proceeding that is discontinued or settled. In my view, it has no applicability to this motion.

[50] Tariff C deals with costs following an application in Chambers. It provides:

**TARIFF C**

**Tariff of Costs payable following an Application heard  
in Chambers by the Supreme Court of Nova Scotia**

For applications heard in Chambers the following guidelines shall apply:

- (1) Based on this Tariff C costs shall be assessed by the Judge presiding in Chambers at the time an order is made following an application heard in Chambers.
- (2) Unless otherwise ordered, the costs assessed following an application shall be in the cause and either added to or subtracted from the costs calculated under Tariff A.
- (3) In the exercise of discretion to award costs following an application, a Judge presiding in Chambers, notwithstanding this Tariff C, may award costs that are just and appropriate in the circumstances of the application.
- (4) When an order following an application in Chambers is determinative of the entire matter at issue in the proceeding, the Judge presiding in Chambers may multiply the maximum amounts in the range of costs set out in this Tariff C by 2, 3 or 4 times, depending on the following factors:
  - (a) the complexity of the matter,
  - (b) the importance of the matter to the parties,
  - (c) the amount of effort involved in preparing for and conducting the application (such applications might include, but are not limited to, successful applications for Summary Judgment, judicial review of an inferior tribunal, statutory appeals and applications for some of the prerogative writs such as certiorari or a permanent injunction.)

<b>Length of Hearing of Application</b>	<b>Range of Costs</b>
Less than 1 hour	\$250 - \$500
More than 1 hour but less than ½ day	\$750 - \$1,000
More than ½ day but less than 1 day	\$1000-\$2000
1 day or more	\$2000 per full day

[51] Civil Procedure Rule 77.05 provides:

**Assessment of interlocutory costs**

- 77.05** (1) The provisions of Tariff C apply to a motion, unless the judge hearing the motion orders otherwise.
- (2) A judge may assess costs, and provide for payment of costs, when a motion is withdrawn or abandoned.

[52] I conclude that the costs of this motion should be assessed under Tariff C.

[53] Mr. Belliveau has indicated that he is seeking basic costs of the motion in the amount of \$500.00. Tariff C allows for this figure to be multiplied by 2, 3 or 4 times where an order following a motion is determinative of the entire matter at issue. My decision is determinative of Ms. Ocean's entire claim against Economical for negligence and bad faith. I must therefore determine the appropriate multiplier having regard to the complexity of the matter, the importance of the matter to the parties and the amount of effort involved in preparing for and conducting the motion.

[54] The unique and unwieldy characteristics of this proceeding made it complex.

[55] The allegations of negligence and bad faith were serious and were clearly important to both parties.

[56] Finally, the documentation filed in support of the motion was quite voluminous although the motion itself was relatively short in light of the fact that the Plaintiff did not participate.

[57] As indicated previously, Mr. Belliveau is seeking basic costs of the motion in the amount of \$500.00. A multiplier of 4 would result in overall costs of two thousand dollars (\$2,000.00). I am not satisfied that this amount is sufficient in light of the nature of this proceeding which has been time consuming beyond the norm and has involved a number of attendances and Case Management Conferences in an attempt to move the matter forward. I have a discretion under Tariff C to award an amount that is just and appropriate in the circumstances. I conclude that Economical's request for costs in the amount of three thousand five hundred dollars (\$3,500.00) is appropriate for this motion payable upon release of the Court's decision on damages or upon such earlier date as may be set by the Court in the event that the Plaintiff does not proceed to trial on the issue of damages.

[58] As indicated previously, Economical is also seeking disbursements in the amount of \$444.78. The Plaintiff has been provided with particulars of these disbursements. She has not objected to this claim and the figure appears to be reasonable. Economical will therefore be awarded their disbursements in the amount of \$444.78.

[59] An Order will issue accordingly.

Deborah K. Smith  
Associate Chief Justice