

SUPREME COURT OF NOVA SCOTIA

Citation: Ocean v. Economical Mutual Insurance Company,
2013 NSSC 14

Date: 20130123
Docket: Hfx No. 190673
Registry: Halifax

Between:

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

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Judge: The Honourable Associate Chief Justice Deborah K. Smith

Heard: January 8th, 2013 in Halifax, Nova Scotia

Written Decision: January 23rd, 2013

Subject: Civil Law: Civil Procedure Rule 88 - Abuse of Process

Summary: The Plaintiff and the Defendant, Sullivan, were involved in a motor vehicle accident in December of 2000. The issues of liability and damages were severed. A 25 day trial on liability was concluded in January of 2011. The Defendant, Sullivan, was found to be 80% liable and the Plaintiff was found to be 20% liable for the collision. Since May of 2011, the Plaintiff has refused to participate further in the proceeding. The Defendants brought a motion to dismiss the Plaintiff’s claim for damages based on the doctrine of abuse of process.

Issue: Should the Plaintiff’s claim for damages be dismissed in these circumstances?

Result: The Court found that the Plaintiff’s continued refusal to participate in the proceeding constitutes an abuse of process. In light of the extreme nature of the relief that was being sought (a dismissal of the damage claim) and in light of the fact that the Plaintiff has a valid claim, the Plaintiff should be given one final opportunity to re-engage in the process. A case management conference was scheduled for February 5th, 2013. If the

Plaintiff fails to appear at that time, her claim for damages will be dismissed.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.
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