SUPREME COURT OF NOVA SCOTIA

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

Date: 20130123
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:	January 8th, 2013 in Halifax, Nova Scotia
Oral Decision:	January 23rd, 2013
Written Decision:	January 23rd, 2013
Counsel:	C. Patricia Mitchell/Scott R. Campbell for the Defendant, The Economical Mutual Insurance Company. May Ocean (Plaintiff – did not appear) Raymond Patrick Sullivan (Defendant -Self-represented)

By the Court:

[1] The Defendants, Raymond Patrick Sullivan and the Economical Mutual Insurance Company, have brought a motion to dismiss the Plaintiff's claim for damages based on the doctrine of abuse of process. They bring their motion pursuant to Civil Procedure Rule 88.

BACKGROUND

[2] The events leading up to this motion have been referred to in a number of previous decisions relating to this action but need to be repeated here in order to put the situation in context.

[3] On December 13th, 2000, the Plaintiff, May Ocean, 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 5th, 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 30th, 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 negligence and bad faith claims against Economical for the manner in which it 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 31st, 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 claims brought by the Plaintiff against Economical.

[8] On September 10th, 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 30th, 2010, the proceeding was trifurcated. In particular, the issue of damages was severed and was ordered to be heard after the two trials relating to liability (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 14th, 2010 and January 5th, 2011. Since the conclusion of this first trial, the court has been case managing the file in an attempt to move the remainder of the proceeding forward.

[11] On April 29th, 2011, Economical applied to amend its defence to respond to the negligence and bad faith claims brought against it by the Plaintiff. Ms. Ocean objected to the amendment. On May 26th, 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 11th, 2011, Economical filed a motion seeking an order for a discovery examination of the Plaintiff in relation to the negligence/bad faith claims brought by Ms. Ocean. Evidence filed with the Court in support of that motion indicated that in March of 2011, Ms. Ocean was not opposed *per se* to being discovered but she wanted it done on her terms. By April 1st, 2011, Ms. Ocean had 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

the office of Economical's solicitor. 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.

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

[14] On May 31st, 2011, a decision was released on liability for the motor vehicle accident (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 13th, 2000. In addition, Economical was found liable to pay Ms. Ocean the amount that she was 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.

[15] As indicated previously, Economical's motion for an order for a discovery examination of the Plaintiff was scheduled to be heard on June 10th, 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 [sic] 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.

[16] It is useful, at this stage, to know that the Plaintiff alleges that Economical is involved in monopolistic and "conglomerate" activity. In the past, she has regularly spoken of a "golden handshake" which she believes exists between Economical and various other entities involved in this litigation, including the Court.

[17] That same day (June 10th, 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 17th, 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.

[18] On June 14th, 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.

[19] 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.

[20] On June 28th, 2011, Ms Ocean filed a Notice of Appeal in relation to the court's May 31st, 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.

[21] On July 5th, 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 claims advanced by the Plaintiff. That motion was heard on September 9th, 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.

[22] On November 10th, 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 February 1st, 2012. An Order to this effect was issued on November 25th, 2011. Ms. Ocean did not comply with this Order.

[23] On November 17th, 2011, Ms. Ocean appeared in the Court of Appeal seeking, *inter alia*, leave to proceed with her appeal of the court's liability decision without a transcript of the trial. This motion was dismissed (see 2011 NSCA 106.)

[24] By Order dated March 7th, 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 [which was held on March 1st, 2012] despite notice having been sent to her designated address for delivery of documents.

[25] On March 7th, 2012, Economical's solicitor wrote to this Court seeking a date for a motion to strike the Plaintiff's negligence/bad faith claims. The next day, Ms. Ocean sent to the Court and to Economical's solicitor 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]

[26] On March 20th, 2012, Economical filed a Notice of Motion seeking an order pursuant to Civil Procedure Rule 88 striking the Plaintiff's negligence/bad faith claims against them. The Notice also referred to Civil Procedure Rule 45, which allows a party to make a motion for dismissal of a claim if a party ordered to provide security for costs fails to do so. The matter was heard on April 10th, 2012. 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.

[27] By decision given on April 24th, 2012, the court dismissed Ms. Ocean's claims against Economical for negligence and bad faith (see 2012 NSSC 144.) The court stated at ¶ 35 - 46:

> 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 26th, 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 25th, 2011 requiring Ms. Ocean to post security for costs in the amount of ten thousand dollars ($10,000.00) by the 1st day of February, 2012. Neither of these Orders have been complied with.
>
> 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.

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.

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.

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.

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.)

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

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.

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

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.

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.

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

[28] The dismissal of that portion of Ms. Ocean's claim was granted pursuant to Civil Procedure Rule 45.04(3). The court did not deal with Civil Procedure Rule 88 (Abuse of Process.)

[29] On June 6th, 2012, the court wrote to all parties advising that a Case Management Conference to discuss the next stage of the proceeding (the assessment of Ms. Ocean's damages) would take place on June 20th, 2012, commencing at 2 p.m. The court indicated that it was important that all parties attend. Mr. Sullivan appeared as requested by the court as did counsel for Economical. Ms. Ocean did not attend.

[30] At that Case Management Conference the Defendants requested a date for a motion to dismiss the Plaintiff's claim for damages. The court indicated that it wanted to give Ms. Ocean a "cooling off" period of six months before proceeding with a further motion to dismiss. A date was set for the motion to be heard on January 8th, 2013.

[31] On June 20th, 2012, the court wrote to Ms. Ocean stating the following:

> As you are aware, a Case Management Conference was held today to deal with the third stage of this proceeding (your claim for damages arising from the motor vehicle accident.) You did not appear today despite being given notice of the Conference.
>
> In light of your failure to appear, **Economical and Mr. Sullivan have indicated that they will be bringing a motion to dismiss the remainder of your action.** In other words, they will be seeking to dismiss the damages portion of your motor vehicle accident claim.
>
> As you will recall, I have determined that Mr. Sullivan is 80% liable for the accident that occurred on December 13th, 2000 and that Economical is liable to pay you the amount that you are entitled to recover from Mr. Sullivan as damages for bodily injuries resulting from the accident up to a maximum of two hundred thousand dollars ($200,000.00.) In order for damages to be awarded, you are going to have to participate in the next stage of the proceeding and prove any damages that you say you have suffered as a result of the collision. **If you fail to participate, you run the risk of the case being dismissed with no damages being awarded to you at any time despite your success at the liability trial.**

> I have decided to give you a period of time to reconsider your decision not to participate in this action (at least in this level of court.) Please write to the court in the event that you intend to pursue the action further.
>
> The Defendants' motion to dismiss is scheduled to be heard at the Law Courts, 1815 Upper Water Street, Halifax, Nova Scotia B3J 1S7 on Tuesday, January 8th, 2013 commencing at 2 p.m. **PLEASE NOTE THAT THE REMAINDER OF YOUR ACTION MAY BE DISMISSED IN YOUR ABSENCE IF YOU FAIL TO APPEAR AT THAT TIME.**
>
> [Emphasis in the original]

[32] By letter dated June 29th, 2012, Ms. Ocean replied:

> You ask that I respond to your recent pretrial decision re: Economical's and Mr. Sullivan's motion to have my final case dismissed, which you intend to hear in January.
>
> I remain firm in my refusal to be subjected to further abuse from Sullivan, Economical and their entourage while you yourself turn a blind eye that I regard as further evidence pointing to the fact that you are part of the conglomerate web that I claim.
>
> The following was posted to my blog today http:// toumaiocean. blogspot.ca /2012/06/my-war-with-courts-and-macgregors.html, and let that be the answer to your request and consider it to be another NO!! (not that it matters to you of course)
>
> .....

[33] Ms. Ocean's letter is voluminous and includes the following (which was apparently posted on her blog):

> .....
>
> ● I refuse to attend court hearings any further and have let it be known to all parties and ACJ Smith that I will no longer subject myself to their abuses and further attempts at railroading me.....(p. 9)
>
> .....
>
> ● In the meantime, ACJ Smith allowed a motion by Economical and produced an order stating that I can no longer proceed without putting up $10,000, which I don't have. Regardless I will not subject myself to anymore "ABUSE" from this Judge

> and have stated that to her directly. She does not accept my no as no, obviously. I will continue to stand on my constitutional rights in hopes that somewhere in all of this, there is justice to be had, but I don't hold much hope for that.
>
> ● In the meantime Economical put forward a motion to have my case dismissed re: negligence and bad faith which ACJ Smith allowed. Economical and Sullivan have put forward a motion to dismiss the rest of my case (re: dealing with my injuries and compensation), to be heard sometime in January of 2013 ?! I will not be attending, but in the meantime I will try the appeal court once again now that I have my company's income statements and feel somewhat re energized thanks to the MacGregor's. (pp. 9 and 10)

[34] On October 9th, 2012, Ms. Ocean was personally served with copies of the documents filed in support of this motion to dismiss the remainder of her claim. The hearing was held on January 8th, 2013 as scheduled. Again, Ms. Ocean did not file any materials in response, nor did she appear for the hearing.

[35] At the request of the court, the Registrar of the Court of Appeal attended at the commencement of the hearing. The Registrar confirmed that Ms. Ocean has not brought any further proceedings in the Court of Appeal since the issuance of the Order dated March 7th, 2012, dismissing the appeal of the liability decision.

LAW AND ANALYSIS

[36] The Defendants have brought this motion pursuant to 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.

.....

[37] Rule 88 is designed to deal with misuse of the court's procedure in a way that would bring the administration of justice into disrepute. In ***Toronto (City) v. C.U.P.E., Local 79***, 2003 SCC 63, the Supreme Court of Canada discussed the doctrine of abuse of process stating at ¶ 35:

> Judges have an inherent and residual discretion to prevent an abuse of the court's process. This concept of abuse of process was described at common law as proceedings 'unfair to the point that they are contrary to the interest of justice' (*R. v. Power,* [1994] 1 S.C.R. 601, at p. 616), and as 'oppressive treatment' (*R. v. Conway,* [1989] 1 S.C.R. 1659, at p. 1667). McLachlin J. (as she then was) expressed it this way in *R. v. Scott,* [1990] 3 S.C.R. 979, at p. 1007:
>
> > . . . abuse of process may be established where: (1) the proceedings are oppressive or vexatious; and, (2) violate the fundamental principles of justice underlying the community's sense of fair play and decency. The concepts of oppressiveness and vexatiousness underline the interest of the accused in a fair trial. But the doctrine

> evokes as well the public interest in a fair and just trial process and the proper administration of justice.

[38] Further, at ¶ 37 the court stated:

> In the context that interests us here, the doctrine of abuse of process engages 'the inherent power of the court to prevent the misuse of its procedure, in a way that would . . . bring the administration of justice into disrepute.' (*Canam Enterprises Inc. v. Coles* (2000), 51 O.R. (3d) 481 (C.A.), at para. 55, *per* Goudge J.A., dissenting (approved [2002] 3 S.C.R. 307, 2002 SCC 63)). Goudge J.A. expanded on that concept in the following terms at paras. 55-56:
>
> > The doctrine of abuse of process engages the inherent power of the court to prevent the misuse of its procedure, in a way that would be manifestly unfair to a party to the litigation before it or would in some other way bring the administration of justice into disrepute.....

[39] Dismissing a proceeding for abuse of process is an extreme remedy reserved for cases where the abuse is found to be of a contemptuous and deliberate nature. It is a remedy that is rarely granted unless necessary to maintain the integrity of the judicial system.

[40] In ***Bridges v. Dominion of Canada General Insurance Company***, 2012 NSSC 169, Rosinski, J. stated at ¶ 2:

> Typically this remedy will lie against actively vexatious litigants, however it is available also against those litigants who passively render futile the judicial process.....

[41] Support for this statement is found in ***Hurley v. Co-operators General Insurance Co.*** (1998), 169 N.S.R. (2d) 22 (C.A.) where the court referred to the House of Lords decision in ***Grovit et al. v. Doctor et al.***, [1997] 2 All E.R. 417 (Eng. H.L.), and stated at ¶ 41:

> .....The case of **Grovit** does not advance any new principle, heretofore unknown in Nova Scotia. If a plaintiff started an action in Nova Scotia, and it was determined that he had no intention of carrying the case to trial, an application could be made to strike out his statement of claim under Civil Procedure Rule 14.25(1) [now Rule 88] .....

[42] In ***Grovit et al. v. Doctor et al.***, *supra*, the court dealt with the issue of whether the commencement and continuation of proceedings in circumstances where the plaintiff had no intention of bringing the matter to a conclusion amounted to an abuse of process. At p. 424 Lord Woolf stated:

> .....The courts exist to enable parties to have their disputes resolved. To commence and to continue litigation which you have no intention to bring to conclusion can amount to an abuse of process. Where this is the situation the party against whom the proceeding is brought is entitled to apply to have the action struck out and if justice so requires (which will frequently be the case) the courts will dismiss the action. The evidence which was relied upon to establish the abuse of process may be the plaintiff's inactivity.....

[43] The House of Lords went on to find that it is not necessary to fulfill the test for want of prosecution (including establishing prejudice to the defendants) if the circumstances of a case amount to an abuse of process.

[44] Ms. Ocean has refused to participate in this proceeding in any meaningful way since of May of 2011. She did not appear in court on June 10th, 2011; June 17th, 2011; July, 19th, 2011; September 9th, 2011; March 1st, 2012 (Court of Appeal); April 10th, 2012; June 20th, 2012 and January 8th, 2013 despite being given notice of the proceedings. In correspondence that she has sent to the court she has made it clear that she does not intend to participate further in this proceeding at this level of court (see for example, the email forwarded to the Court on March 8th, 2012, where it is stated, "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." [emphasis by the Plaintiff]) While Ms. Ocean has suggested a number of times that she intends to pursue the matter further in the Court of Appeal, the record indicates that the last time that she was in that Court was November 17th of 2011.

[45] I am fully satisfied that the Plaintiff's continued refusal to participate in this proceeding constitutes an abuse of process. The issue is the appropriate remedy.

[46] Economical has already obtained a dismissal Order in relation to the negligence/bad faith claims that the Plaintiff filed in 2008. In my view, the present motion is distinguishable from the motion for dismissal brought in April of 2012. First, that motion was granted as the Plaintiff failed to post security for costs in relation to the negligence/bad faith claims as ordered by the court. There is no security for costs order in relation to this portion of the proceeding.

[47] Further, that motion involved negligence/bad faith claims that had been brought against Economical more than seven years after the accident occurred. By the time the April, 2012, motion was heard, over a decade had passed since the cause of action arose and yet that portion of the proceeding was still in its preliminary stages. The Plaintiff was refusing to move the proceeding forward and liability was undetermined.

[48] The situation is different in relation to the motor vehicle accident claim. The issue of liability for the motor vehicle accident has been determined and only issues relating to damages remain to be heard. In these circumstances (where a trial has been held and we know that the Plaintiff has a valid claim) the court, in my view, should be extremely reluctant to grant a motion dismissing the Plaintiff's claim for damages.

[49] That is not to suggest that such relief cannot or should not be granted in appropriate circumstances. The court has an obligation to maintain the integrity of the judicial system and to insure that strong-minded litigants do not derail proceedings or bring the administration of justice to a halt. Ultimately, the court must attempt to strike a balance between its obligation to maintain the integrity of the system while, at the same time, trying to insure that a case is not improperly dismissed before being concluded on its merits.

[50] Ordering a dismissal of the Plaintiff's claim for damages is an extreme remedy. The court must consider whether there are alternate, less draconian remedies that can deal effectively with the matter and are appropriate in the circumstances.

[51] I have considered whether a stay of the proceeding until Ms. Ocean elects to participate further would be an appropriate alternate remedy. In my view, it would not.

[52] There are three parties to this litigation: Ms. Ocean, Economical and Mr. Sullivan. Like Ms. Ocean, Mr. Sullivan now is self-represented (he was represented by counsel at the trial that commenced in September of 2010 but has since become self-represented.)

[53] Until June of 2011, this action had been unfocussed and unwieldy, consuming an inordinate amount of resources and time. It is difficult to effectively describe the marathon nature of the proceeding. The issue was dealt with briefly in the decision relating to liability for the motor vehicle accident where it was stated at ¶ 123 - 124:

> Counsel for both of the Defendants have expressed concern about the length of time that it took to hear this trial and the significant costs that have been incurred as a result. A trial which, in my view, would have taken no more than 5 days to hear with experienced counsel ended up being heard over approximately 25 days.
>
> As a self-represented litigant, Ms. Ocean cannot be expected to conduct her case as effectively as an experienced lawyer. The difficulty in this case, however, went far beyond inexperience. Ms. Ocean appeared to be unable or unwilling to focus effectively on the matters that were in issue and seemed intent on subpoenaing witnesses and introducing evidence that was not relevant to this proceeding. In addition, she made serious allegations against both of the Defendants (such as allegations of threats) that were not supported by the evidence.

[54] The Defendants have been attending court as and when requested, cooperating fully with the process. The Plaintiff, who commenced the action, refuses to attend court or cooperate. Such conduct cannot be tolerated.

[55] 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.) These objectives apply to *all* litigants before the court, not just the Plaintiff. As the Honourable Justice Peter M. S. Bryson stated in the recent decision of ***Li v. Jean*****,** 2013 NSCA 8, at ¶ 14:

> In considering Ms. Li's further request for an extension, I not only have to take into account the interests of Ms. Li but also the interests of the respondents. Ms. Li is not the only party entitled to 'justice'. This includes procedural justice which embraces the admonition in *Civil Procedure Rule* 1.01 that determination of proceedings should be 'speedy and just'.....

[56] The motor vehicle accident that gives rise to this claim occurred over twelve years ago. Mr. Sullivan was 22 years old at the time of the collision. The action relating to the accident has been going on for over a decade. One only has to sit in the courtroom to appreciate the toll that this protracted proceeding is taking on this gentleman. In saying that, I am fully aware that Mr. Sullivan has been found to be primarily responsible for the collision. At some point, however, he is entitled to have the action concluded and get on with his life. After twelve years (ten years since the action was commenced), that time has come.

[57] Ms. Ocean has had over a year to reconsider her refusal to participate further in the trial of this matter. Granting a stay until she agrees to re-engage would, in my view, ignore the object of the Rules, ignore the entitlement of the Defendants to bring this matter to a timely conclusion and would allow the abusive conduct to continue.

[58] I have also considered whether an order to indemnify the Defendants for losses resulting from the abuse would be an appropriate alternate remedy. Again, I have concluded that it would not.

[59] Ms. Ocean did not comply with two court orders relating to costs (the Order issued by Justice Coughlan on May 26th, 2011 as well as the security for costs Order issued on November 25th, 2011.) I have no reason to believe that an order requiring the Plaintiff to indemnify the Defendants for losses resulting from the abuse would be complied with.

[60] In my view, there are no alternate remedies that can deal effectively with this matter that are appropriate in the circumstances. Having said that, in light of the extreme nature of the remedy that is being sought and in light of the fact that we know that the Plaintiff has a valid claim, I am of the view that Ms. Ocean should be given one final opportunity to re-engage in this process.

[61] A further Case Management conference shall be held in relation to this action on February 5th, 2013. At that time, strict deadlines will be set to move the damages portion of the case to trial forthwith. All parties shall attend at that time. If Ms. Ocean fails to appear before the court at that date and time, her claim for damages will be dismissed with costs to be assessed.

[62] There is one final matter that I should address – that is the possibility that Ms. Ocean's mental health may be affecting her judgment including her decision whether to participate further in the trial of this matter.

[63] Concern about the Plaintiff's mental health has been in the background of this case for years. In September of 2008, Economical applied to have Ms. Ocean assessed by an independent medical expert to determine her competency to represent herself in this proceeding. Evidence was adduced at that time by Dr. Edwin M. Rosenberg (a psychiatrist) who had seen Ms. Ocean at the request of Economical. In February of 2005, Dr. Rosenberg prepared a report in which he diagnosed the Plaintiff with a delusional disorder, persecutory type. That diagnosis was repeated in a further report authored by Dr. Rosenberg dated January 18th, 2007. In an affidavit filed by Dr. Rosenberg in support of the application to have the Plaintiff assessed, he opined that Ms. Ocean had probably developed a serious and dramatic escalation in the original delusional disorder which was interfering with her ability to separate reality from fiction (see 2008 NSSC 282 at ¶ 11.) In addition, there had been a suggestion from the Plaintiff's psychologist that Ms. Ocean had been diagnosed with Post Traumatic Stress Disorder. The court determined that it was appropriate to have the Plaintiff assessed by an independent medical expert of her own choosing (see 2008 NSSC 282.) If Ms. Ocean was found to be incapable of managing her affairs, a litigation guardian could be appointed to assist her with the litigation.

[64] As indicated previously, Ms. Ocean successfully appealed that decision (see 2009 NSCA 81.) Since that time, the first liability trial was held with Ms. Ocean representing herself. While the proceeding was unwieldly and prolonged, Ms. Ocean was largely successful at trial. In addition, she has managed to successfully represent herself in the Court of Appeal. In other words, Ms. Ocean has managed to represent herself in this proceeding with reasonable success despite her medical condition.

[65] Ms. Ocean is presumed to be competent despite concerns surrounding her mental health. While she now refuses to participate in this proceeding, I have no medical evidence before me on this motion to suggest that her condition has changed since 2008 or, more importantly, that her health prevents her from participating further in this proceeding. I have therefore concluded that it is appropriate to proceed as indicated.

[66] The matter is adjourned until February 5th, 2013 at 9:30 a.m. In the meantime, I will have Ms. Ocean personally served with a copy of this decision.

Deborah K. Smith
Associate Chief Justice