SUPREME COURT OF NOVA SCOTIA
Citation: Thornton v. RBC General Insurance Company, 2014 NSSC 215

Date: 20140702
Docket: Hfx No. 290563
Registry: Halifax

Between:

John Thornton

Plaintiff

v.

RBC General Insurance Company/Compagnie d'Assurance Generale RBC

Defendant

Judge:	The Honourable Justice Michael J. Wood
Heard:	March 13, 2014, in Halifax, Nova Scotia
Written Decision:	July 2, 2014
Counsel:	Glenn E. Jones, for the Plaintiff Michelle C. Awad, Q.C., for the Defendant

By the Court:

[1] John Thornton was injured in a motor vehicle accident on April 15, 1997. As a result of his injuries, Mr. Thornton commenced proceedings against the person alleged to have caused the accident. He received a financial settlement for that claim in 2005.

[2] Mr. Thornton also sought benefits from his Section B insurer, as well as long term disability benefits through his employer, Volvo Canada Limited.

[3] In January, 2008, Mr. Thornton started lawsuits against the Section B insurer for wage loss benefits and Unum Canada, the disability insurer who provided benefits through his employment at Volvo.

[4] In this proceeding, I heard three motions on March 13, 2014. Mr. Thornton requested renewal of his notice of action and statement of claim which had been issued in January, 2008, as well as permission to amend by substituting a new defendant. At the same time, the defendant made a motion for summary judgment on evidence to dismiss Mr. Thornton's claims.

[5] If I am not prepared to grant Mr. Thornton's motions for renewal and amendment, his lawyer concedes that the action must be dismissed

HISTORY OF THE LITIGATION

[6] On January 14, 2008, Mr. Thornton started this proceeding against Unum Canada, claiming benefits under a disability insurance policy provided through Volvo Canada Limited. The statement of claim alleges that Mr. Thornton was disabled within the meaning of the policy as a result of injuries suffered in the motor vehicle accident of April 15, 1997.

[7] The originating notice (action) and statement of claim was never served and on July 30, 2012, Mr. Thornton filed an amended pleading. This document adopted the form of a notice of action and statement of claim in accordance with the *Civil Procedure Rules* then in force. The substance of the amendment was to remove Unum Canada as a defendant and replace it with RBC General Insurance Company. The amended statement of claim alleged that RBC General Insurance

Company acquired the Canadian operations of Unum Provident Canada on or about May 3, 2004, and thereby assumed all rights and liabilities of Unum Provident Canada for the Volvo Canada disability benefits.

[8] On August 24, 2012, the defendant, RBC General Insurance Company, was served with the amended pleadings. On July 10, 2013, RBC General Insurance Company filed a defence stating that it was not the proper defendant and that RBC Life Insurance Company was the party that had assumed the responsibility for the Volvo Canada disability benefits as of May 1, 2004.

[9] The RBC General Insurance Company defence also pleaded expiry of the applicable limitation period and included para. 7, which reads as follows:

> 7. In the alternative, the Defendant says that the Plaintiff's Statement of Claim was not served within the time required by the Nova Scotia *Civil Procedure Rules* and pursuant to *Rule 9.07(1)* of the *Civil Procedure Rules* (1972), it expired on or about July 14, 2008, which is six months after it was filed. The Statement of Claim is presently expired and the Court is therefore without jurisdiction to hear this action.

[10] On August 28, 2013, RBC General Insurance Company filed a notice of motion seeking summary judgment on evidence. The three arguments advanced in the supporting brief were that the defendant had no involvement in the matter, the pleadings had expired without renewal and were therefore not valid at the time of service and, finally, that the applicable limitation period had expired prior to commencement of the proceedings.

[11] The summary judgment motion was originally scheduled to be heard on October 9, 2013 but was adjourned, by agreement of the parties, to January 15, 2014.

[12] On January 13, 2014, Mr. Thornton filed a notice of motion seeking to renew the notice of action and statement of claim, and for permission to amend those documents to change the name of the defendant to RBC Life Insurance Company. Due to the timing of the filing of this motion, the parties agreed to adjourn the summary judgment motion so that it could be heard in conjunction with Mr. Thornton's motions. All of those matters were heard by me on March 13, 2014.

EVIDENCE ON THE MOTION

[13] In support of the summary judgment motion, the defendant filed affidavits of Bobby Blanford and Tracy Swift.

[14] Mr. Blanford is the Director of Casualty for RBC General Insurance Company. He says that his employer has no relationship with Unum Life Insurance Company of America and no record of any claim made by Mr. Thornton.

[15] Ms. Swift is a Senior Consultant for RBC Life Insurance Company and indicated that her employer assumed policies, including the long term disability coverage for employees of Volvo Canada, which had been issued by Unum Life Insurance Company of America. She says that the assumption was effective as of May 1, 2004.

[16] Ms. Swift also says that, upon being informed of the amended notice of action and statement of claim, she attempted to locate file materials relating to Mr. Thornton. She was only able to find a copy of the insurance policy issued by Unum Life Insurance Company of America and a document called a "Detail Activity Listing" summarizing the documents and steps taken by Unum in response to the plaintiff's claim for benefits which was made in 1997. Ms. Swift expresses the belief that the file relating to the plaintiff's claim had been destroyed.

[17] In response to the summary judgment motion and in support of his motions to renew and amend, Mr. Thornton filed an affidavit indicating that he was injured in a motor vehicle accident on April 15, 1997 and settled his third party action for damages in 2005. He said that he presented a claim for long term disability benefits to Unum Canada in 1997 and attached copies of related correspondence indicating that the claim was denied in 1998.

[18] Mr. Thornton's explanation for not commencing action against Unum Canada in 1998 was that he was going to pursue the third party responsible for the accident and claim loss of income in that proceeding. He also hoped to be able to return to work at some point and therefore was unsure as to the potential loss of

income. He says that he had limited financial means and was therefore not in a position to finance lawsuits. He also believed that he needed a report from a specialist to substantiate his claim.

[19] Mr. Thornton's affidavit attaches a copy of a report by Dr. David King prepared in June, 2005, expressing the opinion that he was disabled and that the prospects for return to employment in the future were poor. He was advised by his legal counsel that a copy of Dr. King's report was sent to Unum in 2006 with a request that they reconsider their position. There is no indication in the affidavit as to what response, if any, was received.

[20] Mr. Thornton's affidavit describes discussions with his counsel about amending the pleadings to name RBC General Insurance Company as defendant. He attaches as exhibits a copy of a press release announcing the acquisition of the Unum Provident Canada Business by RBC Insurance and the corporate registration printouts for the two RBC Insurance companies.

[21] In support of the motion to renew the notice of action and statement of claim, and amend those documents to substitute a new defendant, Mr. Thornton filed an affidavit of his counsel, Barry Mason. That affidavit describes the amendment of the pleadings in 2012 to change the defendant to RBC General Insurance Company. It attaches copies of documents from the RBC website which provides information concerning the legal relationship between RBC General Insurance Company, RBC Insurance Company of Canada and RBC Life Insurance Company. He explains that the naming of RBC General Insurance Company was due to insufficient information and was done in error.

MOTION TO RENEW NOTICE OF ACTION AND STATEMENT OF CLAIM

[22] Counsel for the plaintiff argued that by filing a defence the defendant lost the ability to challenge the jurisdiction of the court. In support of that position he relied on the decision in *Waterbury Newton v. Lantz,* 2010 NSSC 359 in which a stay of proceedings was refused on the basis that the defendant had participated in the proceeding. In that case the defendant had gone beyond simply filing a defence and had exchanged documents and agreed to discovery dates. That is much more than RBC General Insurance has done in this litigation. By filing a defence with

an express challenge to the court's jurisdiction, the defendant is not precluded from applying to strike out the claim due to expiry of the originating notice and statement of claim.

[23] In January, 2008, when the action was initially commenced, it was governed by the *Civil Procedure Rules* (1972). Rule 9.07 dealt with renewal of the originating notice (action) and it provided as follows:

> **Duration and renewal of originating notice, etc.**
>
> **9.07** (1) An originating notice is valid for a period of six (6) months beginning with the date of issue of the originating notice, and, when a party has not been served within the period, the court may, for just cause, at any time before or after its expiration, order the originating notice, to be renewed for a period of six (6) months from the date when it would otherwise expire or from such later date as the court may order.
>
> (2) Upon the filing of the order, the prothonotary shall endorse the originating notice, including any concurrent notice or renewal thereof, with a memorandum as follows: "Renewed for the period of six (6) months from ..... by order of .....", and shall sign and seal it with the seal of his office. Any concurrent originating notice subsequently issued shall be endorsed with a copy of the memorandum.
>
> (3) A concurrent originating notice is valid for the period for which the originating notice is valid, including any renewal of that period.
>
> (4) If no defence is filed and if a plaintiff fails to file the Originating Notice (Action) and Statement of claim together with a completed Affidavit of Service within three (3) months after the end of the period of validity set out in rule 9.07(1), the prothonotary shall give seven (7) days notice to the parties that an application will be made to the court for an Order dismissing the claim for non-compliance with this Rule.

[24] According to this provision, the originating notice (action) would have expired in July, 2008.

[25] The defendant argues that the motion to renew is governed by Rule 4.04 of the *Civil Procedure Rules* (2009) which states as follows:

Expiry and renewal of a notice of action

4.04 (1) A notice of action, including a notice of action for debt, expires one year after the date it is filed, unless a defendant is notified of the action in accordance with Rule 31 - Notice.

(2) A plaintiff may make a motion to renew a notice of action for a second year by filing a notice of motion no more than fourteen months after the day the notice of action is filed.

(3) The motion may be made *ex parte*, unless a judge orders otherwise.

(4) A notice of action that is renewed for a second year expires two years after the day it is filed.

(5) A judge may renew an expired notice of action more than fourteen months after the day the notice of action is filed only if the plaintiff satisfies the judge on either of the following:

(a) reasonable efforts were made to notify the defendant of the action by effecting personal service, service could not be effected personally, and the plaintiff will make a motion for a substituted method of giving notice as soon as possible;

(b) inadvertence led to the expiry, the plaintiff will suffer serious prejudice if the proceeding is terminated, and no defendant will suffer serious prejudice that cannot be compensated in costs as a result of the delay in notification.

[26] In *Grosse v. White*, 2010 NSSC 10, McDougall J. considered which Rule should apply to a motion for renewal where the pleading had expired in 2007 and the motion made in 2009. He concluded that the motion was governed by Rule 4.04 of the 2009 Rules, although it is not clear from the decision whether that was a point of controversy between the parties.

[27] The transition provisions found in Rule 92.02 make it clear that the 2009 Rules apply to all steps taken in an action after January 1, 2009. In my view, this clearly indicates that the current Rules are the ones which govern this motion. Rule 92.08 permits a judge to override Rule 92.02 if a party gains an unfair

advantage as a result of the application of that transition provision; however, the plaintiff did not argue that I should consider doing so in this case.

[28] This motion to renew was made six years after the proceeding was commenced and five and a half years after the expiry of the originating notice (action). In these circumstances, Mr. Thornton must satisfy me that one of the two criteria set out in Rule 4.04(5) have been met. There was no evidence of any attempts to serve Unum Canada at any time, either before or after expiry, and so the circumstances in Rule 4.04(5)(a) have not been established.

[29] As I read CPR 4.04(5)(b), the threshold requirement for a plaintiff is to show that inadvertence led to the expiry of the pleading. Once that is established, the court must engage in an analysis of the respective prejudice to the parties. In this case, there is no evidence in Mr. Thornton's affidavit or that of Mr. Mason explaining why the expiry occurred. Mr. Mason's affidavit explains why the wrong RBC company was named at the time of the amendment in 2012, but that does not explain the initial failure to serve the documents prior to expiry.

[30] Mr. Thornton's affidavit also discusses the confusion over the identification of the defendant and explains that the delay in starting the proceeding was due to finances and the absence of a specialist's report which was obtained in February, 2005. Once he settled his claim for person injuries and received the report of Dr. King, those excuses for postponing the proceeding disappeared. In any event, he does not discuss anything about the post 2008 delay.

[31] In my view, the absence of any evidence to substantiate inadvertence as the reason for the expiry is fatal to the motion for renewal based upon the clear wording of the *Civil Procedure Rules*. While it may not be a difficult hurtle to overcome, it is still an important requirement.

[32] Counsel for Mr. Thornton argued that I could infer inadvertence; however, I do not see any evidence from which I can do so. If such an inference is to be drawn here, it is hard to imagine any circumstance where it would not arise. This would render meaningless the requirement to satisfy the court that inadvertence was the reason for expiry.

[33] Even if I am wrong on my interpretation of Rule 4.04(5), I am not satisfied that Mr. Thornton has met his onus to show that the defendant will not suffer serious prejudice that cannot be compensated in costs as a result of the delay in notification. That type of prejudice is typically evidentiary in nature, which requires a consideration of whether documents and witnesses have been lost due to the passage of time. Since this is a claim for disability benefits, the state of Mr. Thornton's health and his ability to perform job functions for the entire period from 1997 to date is in issue. Other than producing a copy of Dr. King's 2005 report, the plaintiff has not provided any evidence with respect to the availability of medical records. nor has he indicated whether the individuals who have been treating him for the last seventeen years are available to be interviewed or discovered by the defendant.

[34] Of most relevance to the renewal motion is the question of whether there has been any loss of evidence or witnesses for the period following the expiry of the originating notice (action) in July, 2008. In light of the burden on the applicant for renewal, it is incumbent on them to show the court the lack of any significant evidentiary prejudice. It is not a situation where the onus is on the defendant to establish actual prejudice, failing which the motion must be granted. In many cases where the plaintiff's health is in issue, the defendant will not be in a position to know what evidence is or is not still available.

[35] In some renewal motions, the defendant may be able to provide evidence of actual prejudice, such as death of witnesses or destruction of documents, and such information will obviously be of assistance to the court in exercising its discretion.

[36] In *Grosse v. White, supra*, Justice McDougall said that the evaluation of relative prejudice required by Rule 4.04(5)(b) was the same as the test which had existed under Rule 9.07 of the 1972 Rules. He relied upon the leading case of *Minkoff v. Poole* (1991), 101 N.S.R. (2d) 143 and, in particular, the following passage from that decision:

> 25 A word should be said about on whom the onus lies in an application of this sort. Mr. Justice Boudreau considered it lay on the applicant to show just cause and I agree. Clearly, the plaintiff has in the first instance, the burden of showing the court circumstances which warrant the discretion to be exercised in the plaintiff's favour including, to the extent that it is within the plaintiff's power to do so, circumstances negativing the conclusion that the defendant was

> prejudiced. The defendant is also in a position to offer evidence on this issue and if, at the end of the day, the scales are evenly balanced when both the injustice to the plaintiff and the prejudice to the defendant are weighed, then the plaintiff should fail.

[37] In my view, this passage confirms the obligation on the plaintiff to provide all evidence within its control which would show a lack of substantial prejudice to the defendant as a result of the delay in renewing the originating pleadings. I am satisfied that even if this motion is governed by Rule 9.07, the outcome would be the same. The absence of any explanation for the expiry and the lack of evidence showing that the defendant has not been prejudiced means that the motion should be dismissed.

MOTION TO AMEND NOTICE OF ACTION AND STATEMENT OF CLAIM

[38] In January, 2014, the plaintiff filed a motion for permission to amend his pleadings to replace the defendant, RBC General Insurance Company, with a new defendant, RBC Life Insurance Company. Counsel for the plaintiff acknowledges that they are separate corporations and says that the naming of RBC General Insurance Company was an error and based on insufficient information.

[39] In my view, the proposed amendment has the effect of adding a new party and is therefore governed by *Civil Procedure Rule 35.08*. Clause 5 of that Rule states as follows:

> **35.08** (5) Despite Rule 35.08(1), a judge may not join a party if a limitation period, or an extended limitation period, has expired on the claim that would be advanced by or against the party, the expiry precludes the claim, and the person protected by the limitation period is entitled to enforce it.

[40] Counsel for the defendant and proposed new defendant take the position that this section is applicable and, because of the expiry of the limitation period against RBC Life Insurance Company, the amendment motion must be dismissed.

[41] The Honourable Justice Bourgeois of this Court considered Rule 35.08 in *Sweeney-Cunningham v. IBG Canada Ltd.*, 2013 NSSC 415 and concluded that

the Court had no discretion to permit amendment in the face of an expired limitation period (see para. 42).

[42] *Civil Procedure Rule 35.06* applies where a party has been misnamed. That Rule provides, in part:

> **35.06** (1) No proceeding is defeated by reason of a wrong person having been joined as a party or a right person having not been joined, unless an order removing or adding a party would cause serious prejudice that cannot be compensated in costs or an abrogation of an enforceable limitation period.
>
> (2) A judge may make an order removing or adding a party to prevent the defeat of a proceeding, unless doing so would cause serious prejudice that cannot be compensated in costs or an abrogation of an enforceable limitation period.
>
> (3) No proceeding is defeated by reason of a party having been wrongly named, unless both of the following apply:
>
> (a) because of the misnaming, the misnamed party was unaware of the proceeding;
>
> (b) the correction will cause serious prejudice that cannot be compensated in costs, and would not have been suffered if the party had been properly named originally.
>
> . . . .

[43] I do not believe that this is a misnomer case and therefore this Rule is inapplicable. If I am wrong, I believe that expiry of the limitation period against RBC Life Insurance Company would be a justification for refusing the amendment under ss. 2.

[44] It is clear that the determination of the limitation period applicable to Mr. Thornton's claim against RBC Life Insurance Company will be a significant factor in the disposition of the motion to amend.

[45] Both parties provided numerous authorities dealing with limitation periods applicable to disability insurance claims and loss of income benefits under Section B of the standard automobile insurance policy. It is clear from those authorities

that there are different views with respect to the calculation of the limitation period applicable to such claims. Not surprisingly, the specific language used in defining the period and its commencement will dictate the outcome.

[46] There are a number of cases where the limitation period is said to run from the date on which the cause of action arose. When faced with that language, some courts have found that there is a "rolling" limitation period which starts afresh each time a monthly payment is not made. This was the conclusion in *Smith v. Empire Life Insurance Co.,* (1996) Carswell Ont. 1182 and *LeBlanc v. Zurich Insurance Co.* (2000), 231 N.B.R. (2d) 112.

[47] The issue of whether there is a rolling limitation for periodic payments has not been decided in Nova Scotia, although the question has arisen in the context of a summary judgment motion. *Thornton v. Economical Insurance Group,* 2010 NSSC 355 involved the same plaintiff as this proceeding. In that decision, Boudreau J. reviewed a number of earlier Nova Scotia decisions and commented that the argument in support of a rolling limitation period for Section B claims in Nova Scotia was "persuasive", but that he need not decide the issue on the summary judgment motion. I would note that the limitation period for Section B claims commences on the date on which the cause of action arises.

[48] In this case, the defendant relies on the following provisions of the insurance contract:

> F. NOTICE AND PROOF OF CLAIM
>
> 1. Notice
>
> a. Written notice of claim must be given to the Company within 30 days of the date disability starts, if that is possible. If that is not possible, the Company must be notified as soon as it is reasonably possible to do so.
>
> b. When the Company has the written notice of claim, the Company will send the insured its claim forms. If the forms are not received within 15 days after written notice of claim is sent, the insured can send the Company written proof of claim without waiting for the form.

2. Proof

a. Proof of claim must be given to the Company. This must be done no later than 90 days after the end of the elimination period.

b. If it is not possible to give proof within these time limits, it must be given as soon as reasonably possible. But proof of claim may not be given later than one year after the time proof is otherwise required.

c. Proof of continued disability and regular care of a physician must be given to the Company within 30 days of the request for the proof.

d. The proof must cover:

I. the date disability started;

ii. the cause of disability; and

iii. how serious the disability is.

. . . .

H. LEGAL PROCEEDINGS

A claimant or the claimant's authorized representative cannot start any legal action:

1. until 60 days after proof of claim has been given; nor

2. more than 3 years after the time proof of claim is required.

[49] As is apparent from these provisions, the limitation period does not begin to run when the cause of action arises, but rather at the time that the proof of claim is required which is stated to be no more than 90 days after the end of the elimination period. This is defined to be 180 days following the first day of disability.

[50] There have been several decisions which have considered similar, but not identical language. For example, in *Balzer v. Sun Life Assurance Co. of Canada,* 2003 BCCA 306, the limitation period commenced one year after the "furnishing of reasonably sufficient proof of a loss or claim under the contract". In that case, benefits had been paid by the defendant for two years and then terminated when the definition of disability under the policy changed from "own occupation" to "any occupation". The correspondence received by the plaintiff from the defendant insurer indicated that coverage was denied, but would be reviewed if she were able to provide more detailed medical information.

[51] The Court concluded that in order to trigger the beginning of the limitation period, it was necessary to have a clear and unequivocal denial of benefits and that the correspondence from the defendant was ambiguous. Any such ambiguity should be resolved in favour of the insured. The Court also called upon the legislature of British Columbia to amend the limitation provisions in the *Insurance Act*, which did not "fit comfortably" with coverage for disability benefits that require continuous proof of disability. It would appear that the Court's decision that an unambiguous denial was the trigger for running of the limitation period was as much based upon the equities between the parties as the specific statutory language.

[52] In *Colgur v. Manufacturers Life Insurance Co.,* 2009 BCSC 1125, the policy required actions to be brought no more than two years after the last day on which "proof of claim would be accepted under the terms of this policy". In that case, benefits had been paid for two years and then terminated when the policy definition of disability changed to "any occupation". The Court found that the limitation period did not start until the plaintiff received an unequivocal denial of her entitlement to benefits from the defendant insurer.

[53] In *Goorbarry v. Bank of Nova Scotia*, 2011 ONCA 793, the Ontario Court of Appeal dealt with a limitation period in a disability insurance policy which ran from the "the date of happening of the covered event". The phrase "covered event" was not defined in the policy. The Court determined that the phrase should be interpreted as follows:

> **9** From these three paragraphs, it is apparent that "the covered event" defines the factual elements that must be in place before a claimant can commence an action. There are two possible "covered events". The first is the date when the

> person provides initial proof of disability following 26 weeks of being continuously disabled. If no payment is made, the person has two years to commence an action. The second covered event occurs when the person is deemed to have ceased to be disabled as of the date prior to the date when demand was made for proof of continuing disability and proof was not furnished. Again, the person has two years following that date to commence an action.

[54] The Court also considered the appellant's argument that there was a rolling limitation period that renewed every month. In support of that, she relied on several decisions which dealt with claims for accident benefits payable under the *Insurance Act*. The limitation for actions on such claims started on the date on which the cause of action arose. The Court rejected the argument that there was a rolling limitation period for the following reasons:

> **13** In order for the rolling limitation period to apply in the context of the limitation contained in the respondent's Benefit Plan, the "covered event" would have to occur every month, just as the cause of action accrued every month in the *Wilson's Truck* case. However, on the specific wording of this Plan, the "covered event" does not reoccur. As I explained above, there are two covered events that are described within the Claims section of the Plan. The first occurs when the person first qualifies for long-term disability benefits, and the second, when the person is deemed no longer to be disabled because they have not provided satisfactory proof of continuing disability. Unlike in *Wilson's Truck*, each of these events happens only once, not every month on an ongoing basis.

[55] When I consider the language of the disability policy provided to Mr. Thornton through his employment with Volvo, I am satisfied that it does not create a rolling limitation. Claims must be commenced within three years from a defined date and that date does not reoccur every month. The policy is not clear about what happens if there are ongoing discussions with an insured concerning the sufficiency of medical information or if benefits are paid for a period of time and then terminated. I believe this ambiguity should be interpreted against the defendant and I would take the approach of the British Columbia Court of Appeal in *Balzer* and find that the limitation period does not begin to run until there is a clear and unambiguous denial of benefits.

[56] In his affidavit deposed to on October 9, 2013, Mr. Thornton states in two different paragraphs that Unum Canada denied his claim for benefits in 1998. In addition, he attaches as an exhibit, correspondence with the insurer. The last letter which he received was dated June 8, 1998 and concluded with the following para.:

> With regret, we must confirm that you are not eligible for benefits. We hope that this explanation will assist you in understanding our assessment, but please feel free to contact us further if we can answer any questions or provide further information.

[57] This letter is a clear and unambiguous denial of Mr. Thornton's request for disability benefits and, therefore, commences the three year limitation period. Even taking into account the 180 day elimination period, the proceedings had to be started by no later than early 2002.

[58] Section 3 of the *Nova Scotia Limitation of Actions Act* creates a discretion in the court to extend a limitation period for up to four years in appropriate circumstances. This authority applies to contractual limitations, such as that found in the Unum Canada disability plan. Even if Mr. Thornton were able to demonstrate that this discretion should be exercised in his favour, the extension would not be sufficient to save his action which would still be two years out of time.

[59] I am satisfied that the applicable limitation period and any potential extension expired prior to Mr. Thornton commencing these proceedings. With a motion to amend the proceeding to add a new defendant under *Civil Procedure Rule 35.08*, the Court must consider whether the limitation period has expired as of the date of the motion. In this case, that would be 2014. Mr. Thornton's claim against RBC Life Insurance Company was barred by the expiry of the limitation period more than eight years prior to the amendment motion being brought. Rule 35.08(5) requires me to dismiss the motion because of the expired limitation. Even if I had discretion to permit the amendment, I would not exercise it in Mr. Thornton's favour in these circumstances.

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

[60] Although counsel for Mr. Thornton submitted that if I did not grant his motions to renew and amend the notice of action, I need not consider the defendant's motion for summary judgment, I believe that I must do so in order to dispose of the litigation.

[61] Since I have denied the plaintiff's motions, Mr. Thornton is left with a claim against RBC General Insurance Company which, he concedes, has no connection with the disability insurance policy issued to employees of Volvo Canada. In the circumstances, the defendant's motion for summary judgment on evidence pursuant to *Civil Procedure Rule 13.04* is granted and the proceeding is dismissed.

CONCLUSION

[62] For the reasons outlined above, I have not permitted the plaintiff to renew the notice of action and statement of claim, nor amend it to add RBC Life Insurance Company as a defendant. As a result, the defendant's motion for summary judgment is essentially unopposed. I will grant the motion and dismiss Mr. Thornton's action.

[63] In the event that the parties are unable to agree on the issue of costs, I will receive written submissions from them.

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Wood, J.