

CANADA / JUDGMENT

Derenzis v. Ontario

2025 ONCA 893

COURT

Court of Appeal for Ontario

DECIDED

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Derenzis v. Ontario

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Sossin, Lorne; Favreau, Lise G.; Wilson, Darla A.

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COURT OF APPEAL FOR ONTARIO

CITATION: Derenzis v. Ontario, 2025 ONCA 893

DATE: 20251224

DOCKET: COA-24-CV-1137

Sossin, Favreau and Wilson JJ.A.

BETWEEN

Lucia Derenzis and Joshua Da Silva

Plaintiffs (Appellants)

and

His Majesty the King in Right of Ontario*, Gore Mutual Insurance Company*, Heidi Sevcik*, Joseph Ferrito*, Sarah Beecraft*, Jennifer Bethune*,

Ken Jones, by his litigation administrator, Christopher Raymond Jones*, Whitehall Bureau of Canada Limited, Micheal Wright,

David Mascarenhas, Ambleside Investigation Management Inc., Rapid Interactive Disability Management Limited*, Ranu Heeraman Singh

(a.k.a. Ranu Heeraman), Peel Regional Police Services Board, Andrea

Perone, Carl Mullings

Defendants (Respondents*)

Ashu Ismail, for the appellants

Ryan Cookson and Adrienne Ralph, for the respondent, His Majesty the King in Right of Ontario

Ari Krajden, for the respondent, Rapid Interactive Disability Management Limited

Arthur Camporese, for the respondents, Gore Mutual Insurance Company, Heidi Sevcik, Joseph Ferrito, Sarah Beecraft, Jennifer Bethune, and Ken Jones, by his litigation administrator, Christopher Raymond Jones

Heard: August 28, 2025

On appeal from the order of Justice Renu J. Mandhane of the Superior Court of Justice, dated September 27, 2024, with reasons reported at 2024 ONSC 5367.

Wilson J.A.:

I. OVERVIEW [1] The appellant, Lucia Derenzis (“Derenzis”), was involved in a motor vehicle accident on November 24, 2015 in which she suffered injuries. Derenzis sued Gore Mutual Insurance Company (“Gore”), her automobile insurer, and a number of Gore employees for accident benefits, alleging they engaged in tortious actions. She also made claims against Rapid Interactive Disability Management Inc. (“Rapid”), Whitehall Bureau of Canada Ltd. (“Whitehall”) and Ambleside Investigation Management Inc. (“Ambleside”) arising from alleged harassment and intimidation. She further named His Majesty the King in Right of Ontario (“Ontario”), challenging the validity of the statutory accident benefits scheme relating to medical assessments and caregiver compensation as outlined in ss. 19(3) and 55(2) of the Statutory Accident Benefits Schedule, O. Reg. 34/10 (“SABS”). She also alleged that s. 280 of the Insurance Act, R.S.O. 1990, c. I.8, is invalid because it violates her rights under the Canadian Charter of Rights and Freedoms

by extinguishing the rights of victims involved in motor vehicle accidents, and by transferring adjudication of SABS to a tribunal with the power to determine matters of tort and contractual disputes without procedural protections and independence. Finally, she pled that the manner in which payments for care are made under the SABS constituted a breach of the Human Rights Code, R.S.O. 1990, c. H.19.

- [2] The appellant, Joshua Da Silva (“Da Silva”), is the son-in-law of Derenzis, and he pled that on October 31, 2017, he was struck by a vehicle driven by an investigator hired by Gore and he claims various damages.
- [3] While there are other defendants named in the amended statement of claim, Gore and its employees, Rapid, and Ontario brought motions under r. 21 of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194 to strike the claims against them without leave to amend.

The reasons of the motion judge

- [4] The motion judge declined to dismiss the action against the defendants on the basis that the Superior Court of Justice lacked substantive jurisdiction because the action involved an unaddressed constitutional challenge to s. 280 of the Insurance Act. She found that this part of the r. 21 motion was premature since it was not plain and obvious that the constitutional challenge would fail. She also noted a r. 21 motion was not the appropriate vehicle for a determination of the constitutional issue.
- [5] As well, she did not dismiss the claims based on the intentional infliction of emotional distress, finding it was not plain and obvious that Gore and/or its employees could not be held liable for these damages if it was determined that they had acted in a way to intimidate or harass the insured.
- [6] The motion judge struck a number of claims without leave to amend, finding it was clear they were doomed to fail: the claims for breach of the Human Rights Code and the constitutional challenge to the SABS; the battery, breach of privacy, breach of good faith, and abuse of process claims against Gore, its employees and Rapid; and the DaSilva claims against Gore, its employees and Rapid.
- [7] The respondents do not appeal the motion judge’s ruling on the s. 280 challenge or her dismissal of the motion to strike the claims for intentional infliction of emotional distress. Derenzis and Da Silva appeal, asking that the order be set aside. The appellants submit that the motion judge made errors in her analysis of the claims and in her findings that the claims as pleaded had no chance of success. I do not accept that the motion judge made the alleged errors, and I would dismiss the appeal except with respect to the damages claimed for breach of good faith. As I will explain, the motion judge erred in her analysis of the pleading alleging a breach of good faith by Gore.

II. Background [8] It is helpful to briefly set out the history giving rise to the claims and the relationships between the parties. Pursuant to s. 268(1) of the Insurance Act, every motor vehicle liability policy provides for the statutory accident benefits as set out in the SABS. The Licence Appeal Tribunal (“LAT”) has exclusive jurisdiction to resolve disputes concerning an insured person’s entitlement to benefits or the amount of benefits to be paid: Insurance Act, s. 280(2).

- [9] Following the motor vehicle accident, Derenzis applied for and received statutory accident benefits from Gore for, inter alia, income replacements benefits, attendant care expenses, and rehabilitation payments. She also applied for a designation of catastrophic impairment. The appellants allege that Gore and its employees failed to adjudicate Derenzis’ claims in good faith by failing to provide proper documentation to assessors, advising assessors to alter reports, arranging multiple, unnecessary assessments and arranging aggressive surveillance.
- [10] Rapid is a company that arranges referrals for independent medical assessments. Rapid was asked by Gore to arrange various independent medical assessments. Whitehall was asked by Gore to arrange surveillance of the appellants. Derenzis alleges that Rapid arranged an assessment with an occupational therapist, Ranu Singh. On September 7, 2016, Derenzis alleges that Singh forced her to lift weights during the assessment, causing a hernia injury which required multiple surgeries. On behalf of DaSilva, it is alleged that he was injured when he was struck by one of the vehicles that was conducting surveillance.

III. Analysis [11] The parties made submissions on each of the contested causes of action in the statement of claim. In my view, the issues on this appeal can be distilled into the following:

- (1) Did the motion judge err in striking Derenzis’ claims for battery, breach of privacy, and abuse of process?
 - (2) Did the motion judge err in striking Da Silva’s claims?
 - (3) Did the motion judge err in striking the constitutional and human rights challenges to the SABS?
 - (4) Did the motion judge err in striking Derenzis’ claim for breach of good faith?
- [12] Whether or not a pleading discloses a reasonable cause of action is a question of law reviewable for correctness: *Kang v. Sun Life Assurance Co. of Canada*, 2013 ONCA 118, 303 O.A.C. 64, at para. 27. However, a decision denying leave to amend is a discretionary one entitled to deference on appeal: *Darmar Farms Inc. v. Syngenta Canada Inc.*, 2019 ONCA 789, 148 O.R. (3d) 115, at para. 30.
- [13] The appellants amended their statement of claim twice to add additional allegations. The motion judge noted “[t]he Claim makes for difficult reading because the Plaintiffs make no attempt to particularize the claim to recognized causes of action or specific defendants”. I agree. Despite the requirement to plead specific causes of action against named defendants, the appellants have failed to do so in the bulk of the claim.

1. Did the motion judge err in striking Derenzis' claims for battery, breach of privacy, and abuse of process? [14] Derenzis asserts claims for battery, breach of privacy/intrusion upon seclusion, and harassment and intimidation against Gore, its employees, and Rapid. She also alleges the tort of abuse of process against Gore and its employees.
- [15] Derenzis' claim for battery arises from the assessment by the occupational therapist on September 7, 2016. The occupational therapist was a subcontractor hired by Rapid. The motion judge held that the actions of the occupational therapist who conducted an assessment of Derenzis could not ground a claim in battery against Gore or its employees as she was not an employee of Gore. No vicarious liability could therefore attach. I see no error. The motion judge correctly struck the claim without leave to amend because it had no chance of success.
- [16] The motion judge struck the claim against Rapid because it was not brought within the proper limitation period. The appellants argued that the Limitations Act, 2002, S.O. 2002, c. 24, Sched. B ought not to apply because of ss. 16(1)(h.2) and (1.3), which provide that limitation periods do not run in cases of assault when the claimant is "financially, emotionally, physically, or otherwise dependent" on the defendant. The appellants say that at the time of the incident, Derenzis was financially and otherwise dependent on Gore for benefits.
- [17] I do not accept that submission. Even assuming the exception in s. 16(1)(h.2) could apply, there are no facts pled that could establish that Derenzis was financially dependent on either Singh or Rapid. To the extent Derenzis was dependent on Gore, it would have no effect on her relationship of dependency with Rapid or Singh. Section 16(1)(h.2) makes clear that the relationship of dependency must be with "the person who committed the assault". The motion judge therefore made no error in finding that the limitation period governed, and the claim was statute barred.
- [18] The claims rooted in the tort of intrusion upon seclusion seemingly arose from a number of circumstances, including the surveillance undertaken by the investigation companies, Whitehall and Ambleside, changes alleged to have been made to the reports of the various assessors, and the provision of documents to the occupational therapist. Importantly, Derenzis does not allege that Gore or Rapid accessed personal information unlawfully; she acknowledges that she signed a consent prior to attending the assessments which enabled the assessors to obtain and review her medical documentation. As noted by the motion judge, the tort of intrusion upon seclusion requires an improper accessing of personal information: *Owsianik v. Equifax Canada Co.*, 2022 ONCA 813, 164 O.R. (3d) 497, at para. 54, leave to appeal refused, [2023] S.C.C.A. No. 33. This is not alleged in the pleading and, as such, it is plain and obvious that the claim could not succeed and was properly struck.

- [19] Similarly, while the claim baldly alleges that Gore engaged Whitehall and Ambleside to conduct “unlawful” surveillance, there are no facts pleaded to establish how such surveillance was unlawful or how Gore and its employees “invaded or intruded upon the plaintiffs’ private affairs or concerns, without lawful excuse”: Owsianik, at para. 54. Despite amending the statement of claim twice, it remains deficient and fails to articulate any basis for this claim. There is no basis for appellate intervention.
- [20] Finally, I see no error in the motion judge’s decision to strike the claims for abuse of process. The statement of claim does not plead that Gore or its employees initiated a legal proceeding against the appellants. That is an essential element of the tort: *Harris v. Glaxosmithkline Inc.*, 2010 ONCA 872, 106 O.R. (3d) 661, at paras. 27-28, leave to appeal refused, [2011] S.C.C.A. No. 85. Rather, as the motion judge observed, it was Derenzis who initiated the legal proceedings at the LAT against Gore.
2. Did the motion judge err in striking Da Silva’s claims? [21] Da Silva alleges that the appellants were aggressively followed by Wright, an investigator employed by Whitehall. On October 31, 2017, he alleges that he approached Wright’s parked car asking him to identify himself. Wright fled and struck Da Silva with his car, injuring him. Da Silva claims that Wright, Whitehall, Gore, and Gore’s employees were negligent and should be held liable.
- [22] The motion judge found that Da Silva’s claims against Gore and its employees and Rapid must fail because there was no immediate connection between these parties and the intentional application of force on Da Silva. I agree. To make out a successful claim for vicarious liability, the appellants must plead facts capable of establishing 1) “a sufficiently close relationship between the tortfeasor and the party against whom liability is sought”; and 2) a sufficient connection between the action giving rise to the tort and the tortfeasor’s assigned tasks such that the tort can be viewed as a materialization of the risks created by the tasks: *Dunford v. Hamilton-Wentworth District School Board*, 2025 ONCA 438, at para. 7. Here, Wright was neither employed by Gore or its employees or Rapid nor assigned tasks by these corporations. The potentially tortious actions cannot therefore be connected to the respondents. Also, as found by the motion judge, even if Wright were found negligent, given that he was employed by Whitehall, the appellants did not plead a sufficient basis to hold Gore or Rapid liable since they are separately incorporated entities. It is plain and obvious that Da Silva’s claim cannot succeed. The motion judge did not err in striking it.
3. Did the motion judge err in striking the challenge to the constitutional validity of s. 55 of the SABS and the challenge to s. 19 of the SABS based on an alleged breach of the Human Rights Code? [23] Section 55 of the SABS requires a claimant to file an application for benefits but prohibits such an application if the claimant has failed to attend an insurer examination under s. 44. In the amended statement of claim, the appellants pled that the SABS permits violation of the insured’s person by way of the independent assessments, and violates ss. 7, 8, and 15 of the Charter. Section 19(3) of the SABS deals with the payment of attendant care benefits, which the claim alleged was discriminatory and breached the Human Rights Code.

- [24] The motion judge struck both of these claims without leave to amend on the basis that they were an abuse of process. She made no error in her finding. Derenzis had asked the LAT to find that s. 55 of the SABS violated the Charter, but ultimately did not pursue that claim. This court has stated that it is an abuse of process to attempt to relitigate matters that were determined or could have been determined before the administrative tribunal: *Aba-Alkhail v. University of Ottawa*, 2013 ONCA 633, 363 D.L.R. (4th) 470 at para. 12, leave to appeal refused, [2013] S.C.C.A. No. 491. That is precisely the situation with Derenzis, and the motion judge was correct to strike the pleading without leave to amend.
- [25] Similarly, Derenzis challenges s. 19(3) of the SABS under the Human Rights Code, pleading that family members are treated differently in their compensation for providing care to injured family members. However, the legislation is clear that it is within the jurisdiction of the LAT to decide these disputes: *Licence Appeal Tribunal Act*, S.O. 1999, c. 12, Sched. G, s. 5.1(4); *Tranchemontagne v. Ontario (Director, Disability Support Program)*, 2006 SCC 14, [2006] 1 S.C.R. 513. Derenzis made allegations of discrimination before the LAT which were rejected. She sought reconsideration which was also rejected. The motion judge properly found that any challenge to those findings lay with the Divisional Court. I agree with the finding that the pleading of this claim in the Superior Court of Justice constituted an abuse of process and was properly struck without leave to amend.
4. Did the motion judge err in striking Derenzis' claim for breach of good faith? [26] The motion judge struck the breach of good faith claims for three reasons: (1) the appellants do not claim damages for breach of contract, and since breach of good faith is not "a freestanding cause of action," it is "untethered" and cannot proceed; (2) the SABS do not form part of the contract of insurance; and (3) there was no contractual relationship pleaded between the appellants and the respondent Gore employees.
- [27] While the motion judge correctly noted that there was no contractual relationship between the appellants and the employees of Gore, she erred when she found that the appellants had not claimed that there were breaches of contract by Gore. Although lacking particulars, the alleged breaches of contract are contained in the amended statement of claim. It is pleaded that there was a contract of automobile insurance with Gore with various terms, including the requirement to provide payments pursuant to the SABS. It is pleaded that Gore breached its contractual obligations to provide medical records to the assessors (para. 33), that it altered reports (paras. 36-37), and that it "breached its contractual and good faith obligation to provide assessors all relevant information and documentation" (para. 38). The obligation to provide relevant information to assessors is set out in s. 44(9)(1) of the SABS.

- [28] Further, it is pleaded that when Gore received the appellant Derenzis' application for a determination of catastrophic impairment, it breached its good faith obligation to comply with the SABS and instead, arranged further examinations (paras. 81, 82). The appellants specifically claim damages for breaching the SABS, inducing breaches of contractual terms and for breaching their duty of good faith obligations to reasonably adjust benefit claims (para. 117).
- [29] The motion judge erred when she determined that the appellant Derenzis is not claiming damages for breach of contract. While the particulars are lacking at times, read generously in favour of the plaintiff with allowances for drafting deficiencies, it is clear that the appellants are claiming breaches of the contract of insurance: see *McCreight v. Canada (Attorney General)*, 2013 ONCA 483, 116 O.R. (3d) 429, at para. 39. The motion judge's conclusion that the breach of good faith allegations could not stand in the absence of claims for breach of contract was therefore incorrect. Furthermore, an insurer has an independent contractual obligation to deal with all claims in good faith: *Fidler v. Sun Life Assurance Co. of Canada*, 2006 SCC 30, [2006] 2 S.C.R. 3, at para. 63; *Stegenga v. Economical Mutual Insurance Co.*, 2019 ONCA 615, 147 O.R. (3d) 65, at para. 55. The pleading, if amended to include particulars, would be sufficient to ground the claims against Gore rooted in alleged breaches of good faith.
- [30] The motion judge's error was compounded by her finding that the SABS do not form part of the contract of insurance. That is incorrect in law: see *Insurance Act*, s. 268(1); *Warwick v. Gore Mutual Insurance Co.* (1997), 32 O.R. (3d) 76 (C.A.) at pp. 80-83. The motion judge relied on *Yang v. Co-operators General Insurance Company*, 2021 ONSC 1540, *aff'd* 2022 ONCA 178, leave to appeal refused, [2022] S.C.C.A. No. 141, for the proposition that the SABS do not form part of the contract of insurance. Without deciding the question of which portions of the SABS form part of the insurance contract—an issue not adequately addressed or argued by the parties—it is clear that every motor vehicle liability policy is deemed to provide for the benefits included in the SABS, per s. 268 of the *Insurance Act*; see also *Yang*, at para. 29. To the extent Derenzis' claims arise from a breach of the contractual obligation to provide those benefits, the motion judge erred in relying on *Yang* to strike that part of the claim. Moreover, the facts of *Yang* were very different because in that case, the plaintiff had settled her claims with the defendant insurer and was pursuing other individuals with whom she had no contractual relationship. There was therefore no claim against the insurer for alleged breaches of the duty of good faith. Ordinarily, claims for breach of the SABS including claims for breach of the duty of good faith would lie within the LAT's exclusive jurisdiction: *Stegenga*, at para. 54. Since the constitutional challenge to s. 280 of the *Insurance Act* was not struck, however, it is not plain and obvious that these claims are doomed to fail. Derenzis should be granted leave to amend to properly plead her breach of contract and breach of good faith claims against Gore.

IV. Disposition [31] I would allow the appeal only with respect to the claims alleging breach of good faith by the respondent Gore; Derenzis is granted leave to properly plead those allegations. On all other grounds, I would dismiss the appeal. Since success is divided, there shall be no order of costs.

Released: December 24, 2025 “L.S.”

“D.A. Wilson J.A.”

“I agree. L. Sossin J.A.”

“I agree. L. Favreau J.A.”

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