

CITATION: Grammatico v. Chambers, 2012 ONSC 6518
BARRIE COURT FILE NO.: 08-0989
DATE: 20121119

ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

BETWEEN:)
)
STEFANO GRAMMATICO also known as)
STEVE GRAMMATICO and LINDA) **Marc Lemieux**, for the
ANNA GRAMMATICO) Plaintiffs/Respondents
)
Plaintiffs (Respondents))
)
- and -) S.A. Brown/T.J. McCarthy, for the
) Defendant/Appellant
)
BRUCE CHAMBERS, Litigation)
Administrator for THE ESTATE OF)
JASON FRANK MEDEIROS, deceased)
)
Defendant (Appellant))
)
)
)
) **HEARD:** November 13, 2012

2012 ONSC 6518 (CanLII)

EBERHARD J.

- [1] This issue was heard while vetting a list of 53 matters. I particularly emphasized that only matters of less than ten minutes would be heard during this phase of the morning's proceedings. Counsel chose to make their argument within that ten minute timeframe. The Defendant (Appellant) seeks dismissal of the Plaintiff's (Appeal Respondent) motion to quash the appeal in the Divisional Court, on the basis that the motion to quash must be heard by a panel of the Divisional Court and not a single judge of the Divisional Court. Relying on *Courts of Justice Act* 21(3)(4), Rule 61.03(7) and clause 133(b) of the *Courts of Justice Act* where a party seeks to join an appeal requiring leave with an appeal as of right, the moving party takes the position that leave which the Defendant (Appellant) seeks is required to appeal costs in the same proceeding such that a full panel is required. The moving party seeks adjournment of this motion to a full panel of the Divisional Court.
- [2] For his part the Plaintiff points to the *Courts of Justice Act* 19(1.2) which places a \$50,000 threshold on matters to be heard by the Court of Appeal. The Plaintiff

(Respondent on the Appeal) points out that judgment together with interest and costs is well over \$50,000. He therefore asserts that the appeal should be at the Court of Appeal.

- [3] In reply, the Defendant, (Appellant), asserts that there will be no appeal of the substantive judgment. Rather, there is an appeal of an interest component in relation to the costs. The amount in issue under the appeal is under \$50,000. The issue before me appears to be whether the threshold for jurisdiction is determined based on the combined substantive amount of the judgment along with the amount of costs in issue or merely upon the amount of the costs order being appealed.
- [4] If the issue is whether there should be leave to add an appeal of costs to a substantive appeal then I have no jurisdiction to address it. Conversely, I find a single judge of the Divisional Court is able to quash an appeal that is outside of its monetary jurisdiction.
- [5] The Defendant (Appellant) states categorically that the judgment amount is not an issue.
- [6] The leave required by the *Courts of Justice Act* s.133(b) is leave of the Court to which the appeal is to be taken.
- [7] That leaves us with the single question of whether the site of the appeal is determined on the basis of the amount of the substantive judgment, which is not in issue, but which is well over the jurisdiction of the Divisional Court or by the amount of the cost order being appealed which is within the monetary jurisdiction of the Divisional Court.
- [8] The Plaintiff (Respondent on the appeal) cites *Medis Health and Pharmaceutical Services Inc. v. Belrose*, [1994] O.J. No. 457 wherein the Plaintiff recovered judgment in the General Division against the Defendant for \$18,750 and prejudgment interest of \$7,044.09 making a total sum payable to the Plaintiff of \$25,794.09. The Court of Appeal, on a motion to transfer the appeal from the Court of Appeal to the Divisional Court held at paragraph 7:

[7] The issue in this motion is whether in determining if a final order is for “a single payment of not more than \$25,000, exclusive of costs”, prejudgment interest should be included. Both counsel conceded that there is no case squarely on point.

[8] In our opinion the wording of the statute is quite clear. The aggregate amount of damages assessed at trial and prejudgment interest amount to more than \$25,000. The appeal therefore lies to the Court of Appeal. If the legislature did not intend this result, as counsel for the appellant pointed out in argument, s.19(1)(a)(i) can be easily amended by altering it to read “exclusive of costs and prejudgment interest”.

- [9] Although *Medis Health and Pharmaceutical* is not directly on point as the sums, that when added together formed a total greater than the monetary limit of the Divisional

Court, were the judgment and prejudgment interest. Here the bifurcation is between the judgment itself and the cost order. Nevertheless, the case does speak to a logical method for determining jurisdiction where the total can be divided into several parts, some parts of which would be within the jurisdiction of the Divisional Court if viewed on their own.

- [10] It appears that counsel has chosen to appeal only one aspect of the decision of DiTomaso J. Jurisdiction would become unpredictable if the choice of forum is based on the position of appellant counsel as to the aspect of the appealed case at issue. One could contemplate many judgments where different aspects of the claim resulted in amounts which, when added together, totalled an amount greater than the Divisional Court jurisdiction. If, by picking and choosing which aspects of the claim are at issue, counsel could thereby fix the jurisdiction for appeal, the simplicity of the rule would be lost. Add to that the possibility that the Respondent may also have different issues which may or may not be within Divisional Court monetary jurisdiction. It simply becomes too unpredictable to manage.
- [11] Accordingly, the substance of the Plaintiff (Respondent) party's motion is sound. The jurisdiction for appeal must be determined by the aggregate of the sums awarded.
- [12] The Defendant (Appellant) joins the above noted rules together to suggest that a single judge of the Divisional Court cannot make the decision asked of me because a panel is required to grant leave in relation to a costs appeal. I am persuaded that that is an irrelevant consideration in the circumstance where the quantum of the appeal is outside of the jurisdiction of the Divisional Court. Surely a single judge of the Divisional Court can adjudicate on that point and quash an appeal in that forum.
- [13] Accordingly, the Plaintiff (Respondent) motion is granted. The appeal to the Divisional Court is quashed. The Defendant (Appellant) position that this court has no jurisdiction to make the order, is dismissed.

EBERHARD J.

Released: November 19, 2012