

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Allen v. Redrupp

BEFORE: The Hon. Madam Justice A.A. Casullo

COUNSEL: Mr. A. Meringolo, for the Plaintiff, Brian Allen

Mr. J. Belesky, Mr. Stubbs, for the Defendant William Redrupp

Mr. R. Breedon, for the Proposed Defendant

HEARD: January 11, 2022

ENDORSEMENT

Overview

- [1] The plaintiff Brian Allen (“Brian”) brings this motion pursuant to r. 26.01, seeking to add the proposed defendant, Jonathan Redrupp (“Jonathan”), as a defendant to the action.
- [2] Jonathan opposes the motion.
- [3] William Redrupp (“William”) takes no position on the motion.
- [4] For the following reasons, and despite the able submissions of Mr. Breedon, the plaintiff’s motion is granted.

Background

- [5] William owns three adjacent parcels of land in Creemore, Ontario: 2015 Fairgrounds Road where he lives; 1943 Fairgrounds Road which is used by Jonathan as a recreational property (“Recreational Property”); and 2057 Fairgrounds Road, which Brian began renting in May 2016.
- [6] Brian occasionally performed handyman duties for William. On August 12, 2016, Brian was working at the Recreational Property. There is conflicting evidence as to who instructed him to attend there that day. Brian states that William directed him, as he did with every other handyman job. William does not remember instructing him. Brian ultimately fell from a ladder provided by either William or Jonathan, while he was attempting to climb on to the roof of the Recreational Property to remove an antennae. Jonathan states he instructed Brian to remove the antennae.
- [7] A notice letter dated January 5, 2018 was sent to William, which also asked that William identify and provide contact information for any other independent defendants. William did not identify any other potential defendant.

- [8] The statement of claim was issued on July 26, 2018, the statement of defence was served September 26, 2018, and the plaintiff served a reply on October 5, 2018.
- [9] William's affidavit of documents included in Schedule "B" a statement Jonathan gave to an insurance adjuster on January 10, 2018. At William's examination for discovery, also on March 11, 2019, defence counsel read the particulars of the statement into the record, the salient facts being:
- i. Jonathan was in physical possession of the Recreational Property;
 - ii. Jonathan was responsible for maintaining the Recreational Property, including making repairs, upkeep, painting, and renovation; and
 - iii. Jonathan did not need William's permission to maintain, repair, access, or use the Recreational Property.
- [10] Brian states that he had only a passing relationship with Jonathan and was unaware until the statement was read into the record on March 11, 2019 that Jonathan might be an "occupier" of the Recreational Property as defined in the *Occupier's Liability Act* R.S.O. 1990, c. O.2.
- [11] On October 16, 2020 Jonathan was informed by William's lawyer that Brian intended to add him as a party to the action. By agreement of the parties dated December 7, 2020, the time to complete Jonathan's examination for discovery prior to this motion was tolled for the purpose of any limitation period. Unfortunately, given the advent of the pandemic and its lingering effects on our courts, it has taken until today to have the motion heard.
- [12] At his examination for discovery held December 23, 2020, Jonathan confirmed that Brian had no prior knowledge of his role as an "occupier," and that August 12, 2016 was the first time he had asked Brian to repair anything. All prior repairs to the Recreational Property were at the behest of William. In fact, Brian attended on August 12, 2016 to remedy earlier repairs on the Recreational Property, and complete others, and Jonathan appears to have made the request to remove the antennae as an afterthought.
- [13] Accordingly, I find that Brian could not have known that Jonathan was a potential "occupier" until March 11, 2019. Brian had moved into the rental property just three months before he was injured. Jonathan used the Recreational Property "once in a while." There is no evidence as to how many times he attended between May and August; how many times Brian and Jonathan interacted between May and August (based on Jonathan's discovery evidence they did interact at least once); or what they discussed when they did meet. Jonathan was not present when Brian began working, or when he fell off the ladder, although it was Jonathan who found him when he returned home.
- [14] The information Brian required to consider Jonathan might have been an "occupier" was fully within the purview of William to provide. Until the details of Jonathan's statement were disclosed on March 11, 2019, there was no reason for Brian to consider anyone other than William as the sole occupier.

Conclusion

[15] The plaintiff is granted leave to amend the statement claim and add Jonathan Redrupp as a defendant. Draft Order as amended shall issue.

Costs

[16] Counsel are encouraged to agree on costs. If they are unable to do so, they may arrange a short costs hearing, before me, through the Trial Coordinator. Concise briefs are to be filed at least two days prior to the hearing, including bills of costs of both parties. If no arrangements are made within 30 days for an appointment, there will be no order for costs.



CASULLO J.

Date: January 12, 2022