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Warranty does not eliminate client's rights

Primary purpose of Tarion is to administer Ontario New Home Warranties Plan

In the summer of 1999, Brian Griffin bought a new house to be built by T & R Brown Construction Ltd. in the City of Kawartha Lakes.

In March and August of the following year after taking possession, Griffin became unhappy with defects in the house and served notice on what is now the Tarion warranty program of a breach of warranty under the legislation. A conciliation was conducted at the house in August, 2000 and some repairs were made. The warranty program did several re-inspections and then issued a formal report to the owner.

Griffin was still not satisfied and filed a further claim listing 33 separate complaints. After the program responded to the complaints, Griffin launched a formal appeal of the decision. The Licence Appeal Tribunal scheduled five days for hearing the appeal, but a few days before the hearing, Griffin abandoned it and decided to sue the builder and the City of Kawartha Lakes instead.

In November, 2006, Brown and the city asked the court to terminate Griffin's lawsuit as "frivolous and vexatious." They argued that Griffin could not sue because he was obliged to accept the decision of the warranty program in place of any right to collect damages in a civil court.

Section 17 of the Ontario New Home Warranties Plan Act says that every contract to buy a new home is deemed to contain an agreement to submit future differences to arbitration. At first blush, it looks like this provision eliminates the right of any homeowner to sue under the terms of the contract.

At the court hearing on the application to kill the litigation, Griffin's counsel, William F. Kelly, argued that his client's rights under the contract with the builder are not eliminated by the provisions of the warranty program legislation, which is designed to protect the rights of new homebuyers and not truncate them.

Justice Robert A. Clark dismissed the application to toss out Griffin's case without a trial. His view was that the legislation contains no express prohibition against a lawsuit. As a result, he ruled, the jurisdiction of the Licence Appeal Tribunal to decide warranty appeals exists alongside that of the courts, and a homeowner can choose which route to take.

The builder and the city argued that the issue of whether the builder had breached any of the statutory warranties had already been decided by the warranty program, and it would be improper for the owner to litigate the issue all over again in a courtroom. Justice Clark dismissed this argument as well.

Notices of appeal have been filed by Brown and the city.

In this column last week, I quoted from a decision of the Ontario Divisional Court, which ruled last year that the law governing the Tarion program is "consumer protection legislation and should be given broad and liberal interpretation."

This ruling, in the Keith Markey case, was a bold step forward since neither the Ontario New Home Warranties Plan Act nor the regulations passed under it contain any specific statement to that effect. The legislation itself simply states that the primary purpose of the Tarion Warranty Corp. is to administer the Ontario New Home Warranties Plan.

Following the ruling of the Divisional Court in the Markey case, everything that Tarion does will now have to be re-examined in light of Tarion's clarified mandate to protect consumers.

Tarion is an independent, self-governing, arm's-length organization created by the Ontario government. Its annual report states: "Tarion's mandate is unique in Canada. No other province or territory so completely transfers responsibility and liability for management of the home building industry to an independent organization."

Soon that mandate may be subject to further oversight this time by the Ombudsman of Ontario.

Karen Somerville is president of Canadians For Properly Built Homes (CPBH), an Ottawa-based group that speaks for homeowners across the country. Last month, Government Services Minister Gerry Phillips advised Somerville that he is considering having the mandate of the ombudsman extended to include the Tarion warranty program.

That would certainly be good news for people like Brian Griffin and other buyers of new homes and condominiums in Ontario. Having the ombudsman investigate a case would no doubt be faster and cheaper than pursuing a claim for defects in the province's courtrooms or even before the Licence Appeal Tribunal.

Somerville told me that many homeowners have advised CPBH that the option of appealing Tarion's decisions to the Licence Appeal Tribunal (LAT) is not one that they are interested in pursuing for a number of reasons.

These reasons include: the relatively low success rates of those who have taken their cases to the LAT, and the need to retain the services of a lawyer (with no guarantee of success), given that the builder and Tarion are usually represented by a lawyer at the LAT.

My guess is Brian Griffin chose to abandon the tribunal appeal because he would have had to pay his lawyer for a five-day hearing, and might not be any further ahead at the end of it.

In recent months, Ontario ombudsman Andr Marin began investigations into the Ontario Lottery and Gaming Corp., the Municipal Property Assessment Corp., and the denial of certain out-of-country benefits by the Ministry of Health and Long-Term Care.

Buyers of new homes in Ontario will benefit considerably if minister Gerry Phillips expands the ombudsman's mandate to include oversight of the Tarion warranty corporation. In my view, he can't do it soon enough.

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[ ][ ]

COURT FILE NO.: 30031/04
DATE: 2006-11-27

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Brian Griffin and Brian Griffin As Litigation Guardian For Olive Irene Griffin (Plaintiffs) and T & R Brown Construction Ltd. and The Corporation Of The City of Kawartha Lakes (Defendants)

BEFORE: Mr. Justice R. Clark

COUNSEL: William F. Kelly, for the Plaintiffs

Douglas Turner, for the Defendant - T & R Construction Ltd. and Mr. John Ewart for the Defendant - The Corporation of the City of Kawartha Lakes

E N D O R S E M E N T

CLARK J.:

I. INTRODUCTION

[1] The defendants move to have the plaintiff s action struck as frivolous and vexatious.

[2] The plaintiff bought a new home from the defendant builder. The plaintiff has sued the defendant builder for damages said to arise from a breach of the contract of purchase and sale. The plaintiff joined the defendant municipality for allegedly having breached a duty of care it owed the plaintiff to inspect the new home, detect defects and refuse approval of the home until the defects were properly remedied.

II. ISSUES

[3] The issues on this motion are:

(i) whether the plaintiff s right to bring an action is removed by virtue of the operation of the *Ontario New Homes Warranty Plan Act*, , [ONHWPA];

(ii) if the answer to (i) is no, whether the plaintiff must first exhaust all potential remedies under the ONHWPA, before commencing an action;

(iii) if the answer to both (i) and (ii) is no, whether the action is nonetheless barred by virtue of the application of either or both of the following doctrines:

(a) issue estoppel, or

(b) abuse of process.

III. THE FACTS

[4] On August 27, 1999, the plaintiff and the defendant builder entered into an agreement of purchase and sale respecting a new home. The plaintiff took possession of the home upon completion, but was not happy with the quality of workmanship.

[5] On March 13, 2000, and latterly on August 22, 2000, the plaintiff served notice to the ONHWP [the Program] of a breach of warranty under section 14(3) of the Act. The Program conducted a conciliation at the plaintiff s residence on August 27, 2000. Certain repairs were made and the Program did several re-inspections thereafter and issued a report to the plaintiff as required by section 16 of the ONHWPA.

[6] The plaintiff was not content with the repairs and made a further claim to the Program respecting thirty-three separate complaints. By letter dated May 6, 2002, the Program advised the plaintiff of its decision respecting that claim. That letter also advised that the plaintiff had the right to appeal the Program s decision.

[7] The plaintiff launched an appeal and five days were set aside for the hearing of the appeal. Then, a matter of a few days before the scheduled hearing, the plaintiff abandoned that appeal. Shortly afterward, he commenced this action.

IV. POSITION OF THE PARTIES

[8] The defendants claim that the plaintiff s action is barred because:

(i) albeit he did not fully pursue his remedies under the ONHWPA, the plaintiff is nonetheless bound by the provisions of that regime, such that he does not have a cause of action;

(ii) issue estoppel applies; and

(iii) it would be an abuse of process to permit the plaintiff to re-litigate the findings of the Program.

[9] Plaintiff s counsel argues that:

(i) the plaintiff s rights under the contract with the defendant builder are not eliminated by the provisions of ONHWPA, which is a statute designed to protect the rights of new home buyers not truncate them;

(ii) the plaintiff is not precluded from proceeding against the defendants by virtue of the doctrines of issue estoppel or abuse of process;

(iii) the plaintiff is not estopped from proceeding against the defendant municipality because it was not a party to the Program s process.

V. ANALYSIS

(i) Does the Plaintiff have the Right to Sue?

[10] Section 17 (4) of the OHWPA provides:

> Every agreement between a vendor and a prospective owner shall be deemed to contain a written agreement to submit present or future differences to arbitration, subject to appeal to the Divisional Court, and the Arbitrations Act applies.

[11] Section 2 of the *Arbitrations Act*, [the Act] S.O. 1991, chapter 17, provides:

> (1) This Act applies to an arbitration conducted under an arbitration agreement unless
>
> (a) the application of this Act is excluded by law; or
>
> (b) the International Commercial Arbitration Act applies to the arbitration.
>
> (3) This Act applies, with necessary modifications, to an arbitration conducted in accordance with another Act, unless that Act provides otherwise; however, in the event of conflict between this Act and the other Act or regulations made under the other Act, the other Act or the regulations prevail.

[12] None of the exceptions having any application to the instant case, it is clear that the *Arbitrations Act* applies to an arbitration conducted pursuant to section 17(4) of the ONHWPA.

[13] Section 3 of the *Arbitrations Act* provides that the parties to an arbitration can contract out of certain provisions of the Act. Among numerous provisions that cannot be excluded, however, two that are germane to this discussion are found in section 39 (setting aside an award) and section 50 (enforcement of an award). These provisions suggest to me that the arbitration regime was intended by the legislature to be enforceable and not such that one of the parties can unilaterally opt out of the scheme.

[14] Section 23 of the *Arbitrations Act* states that an arbitration may be commenced by a party to an arbitration agreement serving on another party to the agreement notice to appoint an arbitrator. In my view, when the plaintiff served notice that he wanted to appeal the decision of the Program he was effectively commencing an arbitration. That is important because the plaintiff argues that he cannot be bound by the application of the doctrine of issue estoppel to accept the outcome of ONHWP process since there has been no hearing as such. The plaintiff contends that by cancelling his scheduled hearing and proceeding to launch this action in lieu of the ONHWP process, he put himself in the position of never having had a hearing. Without there having been a hearing, the plaintiff contends, the doctrine of issue estoppel can have no application. However, section 27(1) of the *Arbitrations Act* provides that, where the party who commenced the arbitration, but does not submit a statement as specified under section 25(1) within the required time, the Program may dismiss the claim.

[15] Thus, section 17 of the ONHWPA appears, at first blush at least, to constitute a privative clause that would oust any rights the homeowner would otherwise have to bring an action.

[16] On the other hand, in *Carleton Condominium Corp. No. 109 v. Tartan Development Corp.*, , [1995] O.J. No. 619; 22 O.R. (3d) 718; [1995] O.J. No. 935 (suppl.), (G. D.), Sedgwick J. held, at paragraph 9 ff.:

> In 1976, the Ontario legislature enacted the Ontario New Home Warranties Plan Act, now . Under s. 13 of the Act, statutory warranties (quite similar in effect) were introduced for the benefit of "owners" of "homes" against "vendors", all terms as defined elsewhere in the Act. Subsection (6) of section 13 of the Act reads:
>
> > 13(6) The warranties set out in subsection (1) apply despite any agreement or waiver to the contrary and are in addition to any other rights the owner may have and to any other warranty agreed upon.
>
> By the enactment of the statutory warranties, did the Ontario legislature intend to take away the common law rights of purchasers of uncompleted residences to rely on implied warranties.
>
> I do not think so. In my view, the right to rely on the implied common law warranties is expressly preserved by the words "and in addition to any other rights the owner may have" in s. 13(6) of the Act. [emphasis added]
>
> Section 13 of the Act must be viewed in the context of the entire Act which, among other things, established a guarantee fund to provide compensation for owners of homes for breach of the statutory warranties, for ready access to the fund by owners and which extended the benefit of the statutory warranties to owners of new homes (not protected by the common law implied warranties).
>
> Therefore, the common law warranties remain available to purchasers of uncompleted residences in accordance with the cases.

[17] The defendant builder s argues that the plaintiff understood his only warranty to be that found in the ONHWPA. In support of this position counsel for the builder made much of the fact that in his examination for discovery , the plaintiff admitted that he thought that his only warranty was that provided for by the statute. Given that admission, the defendant contends that the plaintiff cannot rely on common law warranties and, thus, by extension does not have a right to bring this action, relying as it does on a breach of the common law warranties. I note, however, in *669585 Ontario Ltd. v. Murray*, [1995] O.J. No. 2495, (S.C.), E. McDonald J. stated at paragraph 33 that [c]ounsel for the Program acknowledged that [the owner] could claim against the builder for breach of contract outside the Warranty Plan . That language clearly suggests that there is a right to bring an action independent of one s rights under the ONHWPA. With respect, I do not find the defendant builder s argument convincing. It seems obvious, with respect, that merely because a person may be ignorant of a right he or she has at law, it does not follow that the person does not have the right.

[18] Similarly, in *Belanger and Belanger v. 686853 Ontario Inc. and Ontario New Home Warranty Program* , [1990] O.J. No. 1181; 74 O.R. (2d) 114, (Dist. Ct.), Wright D.C.J. held at paragraph 7 ff.:

> The plaintiffs had trouble with the foundation of their new home. They referred the matter to the Fund. After conducting a study, the Fund reported on September 27, 1989 that the damage was caused by collision or impact and was not the result of faulty workmanship on behalf of the builder. Under the circumstances the Fund reported that "we have no alternative but to disallow your claim made to the warranty program". This notice of decision did not inform the plaintiffs that they were entitled to a hearing by the Commercial Registration Appeal Tribunal as directed by s. 16(2).
>
> On May 11, 1990 a statement of claim was issued against the builder and the Fund.
>
> On June 4th the Fund responded, repeating its denial of liability and informing the plaintiffs of their entitlement to a hearing by the Tribunal.
>
> The Fund argues:
>
> > 1. That there is no privity between the purchasers and the Fund upon which a cause of action may be founded.
> >
> > 2. That the Act and Regulations contain their own code of procedure for the assessment of claims against the Fund and that this is exclusive.
> >
> > 3. That since all matters between the builder and the purchasers must go to arbitration in accordance with s. 17(4), the Tribunal is peculiarly equipped to handle this type of case.
>
> The builder, generally speaking, joins in these submissions.
>
> The plaintiffs argue that the purchasers are given an entitlement to payment out of the Fund by s. 14 of the Act and that the jurisdiction of the courts can only be ousted by clear legislation to this effect.
>
> In my opinion, the plaintiff has a right to sue the Fund in the courts if he chooses to do so:
>
> > 1. Although there is no privity of contract between the purchaser and Fund, there is a clear statutory entitlement to payment if the prerequisites are met, i.e.:
> >
> > (a) If an "owner"
> >
> > (b) suffers damage
> >
> > (c) because of a major structural defect as defined in the regulations for the purposes of s. 13, and
> >
> > (d) a claim is made within four years after the warranty expires.
>
> The prerequisites are the very types of issue which the courts habitually decide.
>
> > 2. The Act contains no express prohibition against such an action. [emphasis added]
> >
> > 3. The Act contains no clear legislative scheme setting out the role of the Tribunal from which it can be implied that the jurisdiction of the Tribunal is exclusive. Oddly enough there is little mention of the Tribunal or its role. Section 4 of Regulation 726 dealing with "claims" stops with the decision of the Fund being delivered. Section 16(2) [of the Act] simply mandates that the purchasers be informed of their entitlement to a hearing. Whether or not the purchaser requires such a hearing is permissive. [emphasis added]
> >
> > 4. In this case it is convenient to have all parties in one forum -- the court:
> >
> > (a) The plaintiffs concede that not all of [their] claim against the builder may be covered by the Fund.
> >
> > (b) The action against the builder will continue in this court in any event because the builder has waived its right to arbitration: [see] Boucher v. Soo Homes Inc. (1980), 16 R.P.R. 119 (Ont. Dist. Ct.).
> >
> > (c) Inconsistent decisions are avoided. Impact being the issue, it is possible that the homeowner's own insurance might be involved. If the homeowner is forced to pursue the Fund before the Tribunal, he might be without a remedy. The homeowner might sue his insurer in the courts only to be told that the cause of his grief was poor workmanship. He might claim against the Fund before the Tribunal only to be told that the damage was not the fault of poor workmanship but was the result of an impact.
> >
> > I would assume that it will be a rare case that will proceed before the courts given the conciliation provisions, the arbitration provisions and the expeditious procedure set out by the Act, but there seems to be no reason why such actions cannot proceed and this appears to be a case where it should. [emphasis added]

[19] I agree with this analysis. By way of contrast, in the case of injured workers, for example, there is an unmistakably clear ousting of the right to sue an employer for injury sustained in the course of one s employment. In the absence, then, of clear language in the statute, and in light of the fact that the ONHWPA has been held to be remedial legislation, I am not prepared to find that the plaintiff does not have a cause of action.

Must the Plaintiff Exhaust All Remedies Under the ONHWPA Before Commencing an Action?

[20] There is nothing in either the statute, or the case law I have reviewed that convinces me the plaintiff must first exhaust all potential remedies under the ONHWPA before being entitled to commence an action.

(ii) Issue Estoppel:

[21] I turn now to the question of whether the action is barred by virtue of the application of issue estoppel.

[22] In *Don Pocock Construction Ltd. v. Brady*, [2004] O.J. No. 688, Timms J. held at paragraph 28 ff.:

> The court clearly has jurisdiction to make an order, under Rule 21, to strike any pleading that offends the doctrine of issue estoppel.
>
> Issue estoppel is a common law equitable doctrine intended to avoid duplication of proceedings and the waste of judicial resources. In a leading case on issue estoppel, Rasanen v. Rosemount Instruments Ltd., the court stated "[a]t its simplest, issue estoppel is intended to preclude re-litigation of issues that have been determined in a prior proceeding.
>
> Similarly, as stated by Middleton J.A. in McIntosh v. Parent:
>
> > Any right, question, or fact distinctly put in issue and directly determined by a court of competent jurisdiction as a ground of recovery, or as an answer to a claim set up, cannot be re-tried in a subsequent suit between the same parties or their privies, though for a different cause of action. The right, question, or

> fact, once determined, must, as between them, be taken to be conclusively established...

In Rasanen, the court set out the three requirements of issue estoppel as enunciated in Carl-Zeiss-Stiftung v. Rayner & Keeler Ltd. (No. 2) 8:

> 1) that the same question has been decided;
>
> 2) that the judicial decision which is said to create the estoppel was final; and
>
> 3) that the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised or their privies.

Indeed, these three requirements are repeated by Justice Killeen in Richmond Square #2. The proceeding before the court was a motion for summary judgment brought by the ONHWP in its action against the builder. In considering that, Justice Killeen said in paragraph 62:

> "Issue estoppel will apply where (a) the same question has been previously decided, (b) a judicial or quasi-judicial decision said to create the estoppel was final and (c) the parties to the previous decision, or their privies, were the same persons as the parties to the proceeding in which the estoppel is raised."

Both Richmond Square Development Corp. cases involved the same parties. There had been a conciliation report, which had been rejected by the builder. The builder had then sought a hearing in front of the Commercial Registration Appeal Tribunal. The builder withdrew from the hearing when its request for an adjournment was refused. After a five day hearing, the Tribunal issued its decision. The builder appealed that to the Divisional Court, which confirmed the decision of the Tribunal. The builder then sued the ONHWP. The first case was a motion by the ONHWP to strike the builder's Statement of Claim. Justice Browne did so. He held that the matters of breach of duty by the builder, and access by the builder, were matters to which issue estoppel and res judicata applied. He also seemed to suggest that the pleading should be struck due to the behaviour of the builder, which was contemptuous of the laws of the province of Ontario.

In the second case, Justice Killeen was considering a motion for judgment, after the builder's pleadings had been struck. Justice Killeen reviewed the scheme of the ONHWP Act. He says in paragraph 56:

> The entire scheme of the Act reflects an intelligent attempt by the Legislature to provide a protective code of procedure for buyers of new homes. It is a procedure which, in substantial part, recognizes that disputes between the buyers and vendors of new housing should be resolved in an administrative setting and should not be left to the ordinary courts for resolution.

Then in paragraph 57 he says:

> The hearing before the [Commercial Review Appeals] Tribunal is really the linchpin of the code because, when all else fails, the disputing parties can take their dispute reasonably quickly to an independent expert tribunal for resolution.

One relevant case not cited by counsel for the plaintiff is Gala Homes Inc. v. Flisar. That was a motion by the defendants for summary judgment to dismiss Gala Homes' action against them. The defendants had each bought newly built homes from Gala. They claimed that there were deficiencies in the homes that Gala had failed to remedy, resulting in them complaining to the ONHWP. The Plan issued a report but Gala failed to remedy the deficiencies. The Plan then entered into an arrangement with the defendants by which it paid them the monies in settlement of the deficiencies. Gala said that as a result of the complaints, the Registrar under the Plan had refused to renew its registration and that it was unable to carry on its business. The Statement of Claim alleged breach of contract, bad faith and injurious falsehood. The issues and facts in the case were thus very similar to those in both Richmond Square Development Corp. cases.

The motion was allowed and the action dismissed. Of interest was that the court commented that it appeared that Gala was trying to dispute the legitimacy of the decision of the Plan. At paragraph 6 Nordheimer J. stated "the fundamental purpose behind the Plan was to remove just these types of issues from the courts and place them into the hands of a specialized tribunal for determination." He went on to reference Killeen J. in Richmond Square Development Corp. v. Ontario New Home Warranty Program.

However, Justice Nordheimer found that the doctrine of issue estoppel did not apply. He concluded that while the same question was involved between the decision of the ONHWP and the issue raised by the plaintiff in the action in front of him regarding the legitimacy of the deficiencies, he did not consider that Plan's decision to compensate the defendants could properly be characterized as a final judicial decision. Thus, this case stands squarely against the plaintiff's argument herein.

The facts in the Gorscak case are indeed very similar to the case at bar. The Gorscaks purchased a new home from the defendants. Unsatisfied with the workmanship, they filed a complaint with ONHWP. There followed an inspection and a Conciliation Inspection Report. The builder advised the Program that it was prepared to do all the work required of it in the Report. The Gorscaks rejected the offer and requested that the Program issue a Decision Letter, which it did. The Gorscaks then appealed the decision of the Program to the Licence Appeal Tribunal. The Gorscaks did not appeal to the Divisional Court. Instead, they launched a civil action for damages.

The obvious distinction between the Gorscak case and the present one is that there was no formal decision herein by ONHWP under section 14 of the ONHWP Act. There having been no decision, there was no appeal to the Licence Appeal Tribunal.

In my view, it would not be proper to characterize a conciliation report as a final decision of a quasi-judicial nature. Thus, while the defendants have attempted to wring almost every drop of benefit available to them under the ONHWP Act, and while there are now two "expert" reports commenting upon their complaints with respect to the plaintiff's work, they are not estopped from making the claims that they have made in their pleadings. However, they might want to consider the weight that will be given to the two Conciliation Reports should this matter not settle and how their conduct with respect to those two reports might be viewed. [emphasis added]

[23] I agree with the analysis of Timms J. Applying that reasoning to this case, I conclude that there was no final determination because the plaintiff stopped the process before such a determination could be made. The reports issued thus far in this case do not, in my opinion, constitute a final decision of a quasi-judicial nature. In my view, then, the action is not barred by the operation of the doctrine of issue estoppel because there has been no final determination of the issues in question.

[24] The plaintiff may, however, wish to give serious consideration to the last sentence of the above quoted passage. While I have found for purposes of this motion that issue estoppel does not apply so as to bar the plaintiff's action, there is, in my view, the potential for serious negative costs implications for the plaintiff at the end of the day, given that he has chosen to ignore the tribunal process in favour of bringing this action.

(iii) Abuse of Process:

[25] As noted above, the defendants further argue that it would be an abuse of process to permit the action to proceed in light of the findings of the Plan. However, bringing this action is only an abuse of process, in my view, if the plaintiff is trying to re-litigate a matter that has already been decided against him. Counsel for the defendant municipality argues that, inasmuch as the plaintiff abandoned his appeal, it is deemed to have been dismissed. That said, relying on *Gorscak, supra*, counsel then goes on to assert that it would constitute an abuse of the court s process to permit the plaintiff to re-litigate the matter. That simply begs the question, however, of whether there has in fact been a prior determination. For the reasons stated above, I do not consider the conciliation reports to be the equivalent of a quasi-judicial decision; therefore the action is not an attempt to re-litigate the matter and therefore does not constitute an abuse of process.

VI. RESULT

[26] In the result the defendants motion is hereby dismissed.

VII. COSTS

[27] If the parties cannot agree on the matter of costs, they may make written submissions, not to exceed three pages (exclusive of authorities, bills of costs and offers to settle), on the following schedule:

(i) the plaintiff is to serve and file his submissions within seven days of the release of this endorsement;
(ii) the defendants are to serve and file their response within fourteen days of the release of this endorsement; and
(iii) the plaintiff is to serve and file any response within three days after receiving the defendants materials.

Mr. Justice R. Clark

DATE: November 27, 2006

COURT FILE NO.: 30031/04
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and
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BEFORE: Mr. Justice R. Clark

COUNSEL: William F. Kelly, for the Plaintiffs,

Douglas Turner, for the Defendant - T & R Construction Ltd. and Mr. John Ewart for the Defendant - The Corporation of the City of Kawartha Lakes

ENDORSEMENT

Mr. Justice R. Clark

DATE: November 27, 2006

Plaintiff's Trial Record, Tab 2, p. 89, Questions 475 to 494.
Workplace Safety and Insurance Act, 1997, S.O. 1997, CHAPTER 16, ss. 28 ff.