CITATION: Kaushal v. Ampabeng and Aviva Canada Inc., 2015 ONSC 1528
COURT FILE NO.: CV-09-0000-5366-00
DATE: 2015-03-09

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: CHAMAN KAUSHAL, Plaintiff

and

THOMPSON AMPABENG and AVIVA CANADA INC., Defendants

BEFORE: TZIMAS, J.

COUNSEL: Bill Scott, for the Plaintiff

Caroline Gronke, for the Defendants

HEARD: Monday, March 2, 2015

ENDORSEMENT

[1] The defendant, Aviva Canada Inc., ("Aviva") brought a motion for summary judgment pursuant to Rule 20 of the *Rules of Civil Procedure* to dismiss the plaintiff's action on the grounds that the plaintiff's claim discloses no genuine issue for trial.

[2] Reduced to its essence Aviva argued that the plaintiff's claim is statute barred by virtue of the *Limitations Act.* Moreover, Aviva contended that the plaintiff, (Mr. Kaushal), failed to exercise reasonable or due diligence to discover

that Aviva should be named as a defendant in the action within the limitation period.

[3] Mr. Kaushal opposed the motion on three grounds. He contended that his claim against Aviva is not statute barred as it was commenced within the appropriate limitation period. In the alternative, Mr. Kaushal submitted that he proceeded with his claim against Aviva once he discovered that his injury crossed the threshold requirement as anticipated by s. 267.5(5) of the *Insurance Act*. . Finally, and in the further alternative, Mr. Kaushal argued that the claim against Aviva did not begin to run until he made a legally valid demand for payment.

[4] In response to Aviva's motion, Mr. Kaushal brought a cross-motion to obtain leave to deliver a Reply to Aviva's Statement of Defence and to amend the Amended Statement of Claim to plead discoverability pursuant to s. 5 of the *Limitations Act,* 2002.

[5] For the reasons that follow Mr. Kaushal is granted leave to serve and file a Reply to Aviva's Statement of defence, and to amend his Amended Statement of Claim to plead discoverability. Aviva's motion for summary judgment is dismissed.

BACKGROUND

[6] Mr. Kaushal was rear-ended by the defendant Thompson Ampabeng on November 27, 2007. As a result of the motor vehicle accident, Mr. Kaushal suffered soft tissue injuries to his neck and lower back. Following the accident, Mr. Kaushal and Mr. Ampabeng attended at a Collision Reporting Centre and prepared Self-reporting Collision Reports. Both of the reports indicated that Mr. Ampabeng was insured with Unifund Assurance. A policy number was also provided.

[7] At his examination for discovery, which took place on April 9, 2012, Mr. Kaushal gave an account of his discussion with the police at the Collision Reporting Centre concerning Mr. Ampabeng's lack of insurance. Mr. Kaushal was under the impression that the police charged Mr. Ampabeng for his failure to be insured.

[8] Mr. Kaushal saw his family doctor on December 6, 2007 and an orthopaedist on December 12, 2007. Mr. Kaushal was initially prescribed muscle relaxants. Then he was prescribed painkillers and he also started physiotherapy treatment. He was given a note excusing him from work for approximately 4-6 weeks.

[9] Mr. Kaushal, who was a welder, remained off work until March 2008 when he returned to work for light duties. He left his employment in August 2008.

[10] In the period between January 2008 and October 2008, Mr. Kaushal continued treatment with a regime that included chiropractic care, and physiotherapy. A chiropractor prepared a "Work-site and Demands Analysis Report" and a physiotherapist prepared a Functional Capacity Evaluation report. Both made recommendations concerning the need for continued rehabilitation programs to develop core and spinal stability.

[11] Aviva terminated coverage for further physiotherapy treatments on October 30, 2008. Nonetheless, Mr. Kaushal continued with treatments. On July 7, 2009 Mr. Kaushal was examined by another physiotherapist who concluded that Mr. Kaushal's lower back symptoms worsened. An MRI that was done in September 28, 2009 identified multi-level degenerative disc and fact changes.

[12] Mr. Kaushal, who had initially retained the services of a paralegal for his accident benefits claim, retained a lawyer on November 10, 2009 to assume carriage of his accident benefits and to commence a claim for damages as a result of the injuries he sustained in the motor vehicle accident. On November 16, 2007, when Mr. Kaushal's counsel conducted a driver's record search of Mr. Ampabeng, there was no conviction under the *Highway Traffic Act,* arising out of the November 27, 2007 accident.

[13] On November 24, 2009 Mr. Kaushal was assessed by Dr. Sawa who is a neurologist at St. Michael's Hospital. That doctor concluded that Mr. Kaushal's problems were caused by mechanical lower back pain and not because of any lumbosacral radiculopathy. He prescribed anti-inflammatories and physiotherapy and he ruled out surgery.

[14] Mr. Kaushal issued his Statement of Claim against Mr. Ampabeng on November 26, 2009, one day prior to the expiry of the two year anniversary of the accident. According to Mr. Kaushal, the action was commenced to avoid potential limitation issues and to preserve his rights. Mr. Kaushal's counsel confirmed that at the time the claim was issued he had not formed an opinion as to whether Mr. Kaushal meet the requirements of s. 267.5(5) of the *Insurance Act*, and s.4.1 and 4.3 of the *O.Reg. 461/96*, i.e. that he had a threshold claim.

[15] On December 5, 2009, Mr. Kaushal attempted service of the Statement of Claim on Mr. Ampabeng unsuccessfully. On January 22, 2010 Mr. Ampabeng's purported insurer, Unifund advised Mr. Kaushal's counsel that at the time of the accident, Mr. Ampabeng did not possess a valid insurance with the company.

[16] In the period between February 17, 2010 and the middle of May 2010 counsel received Mr. Kaushal's full accident benefits file and clinical notes and records from various treating physicians and therapists, including the results of

the September 2009 MRI. In May 2010, Mr. Kaushal was assessed by a vocational specialist. In that report, the specialist concluded that Mr. Kaushal suffered a "substantial inability to perform the essential tasks of his pre-accident employment".

[17] Mr. Kaushal returned to Dr. Sawa for a follow-up visit on November 16, 2010 and reported continued difficulties. Dr. Sawa recommended a conservative management regime of physiotherapy and painkillers. According to Mr. Kaushal it was following that appointment that he appreciated that there was no surgical solution to his condition and that his accident-related symptoms would be permanent.

[18] Aviva was added as a defendant to this action by Order of Justice Bielby dated September 22, 2011. Leading up to that order, Aviva noted that as early as January 27, 2010 counsel for Mr. Kaushal gave instructions to his articling student to bring a motion to add Aviva as a defendant to the action pursuant to the uninsured motorist provisions of Mr. Kaushal's policy. On or about February 24, 2011, Mr. Kaushal's counsel wrote to Aviva stating that the Plaintiff would be commencing an action against Aviva pursuant to 258.4 of the *Insurance Act.* That motion was not brought until August 30, 2011. In those materials, the basis for the late addition of Aviva was described to be the discovery only in January

2010 that Mr. Ampabeng was not insured. There was no mention of Mr. Kaushal's discovery of a threshold claim.

ANALYSIS AND DISCUSSION

a) Aviva's Position

[19] In light of the above chronology, Aviva argued that Mr. Kaushal's claim against Aviva is statute-barred because he knew almost immediately after the accident, on November 27, 2007, that the offending driver was uninsured but he failed to commence an action against Aviva for more than three years after the limitation period would have begun to run. Aviva also argued that a plaintiff has a duty to make diligent inquiries concerning the potential defendants and that Mr. Kaushal failed in those efforts.

[20] On the issue of the discoverability of Mr. Kaushal's "threshold claim", Aviva argued that the question to be posed is whether the plaintiff knows enough facts on which to base an allegation of negligence against the defendant. The analysis is fact-based. The limitation period begins to run when the claim is discovered. Relying on *Pexeiro v. Haberman,* [1997] 3 S.C.R. 549, counsel argued that neither the extent nor the type of damage, need to be known for the cause of action to accrue. In Mr. Kaushal's case, Aviva submitted that apart from the issue of the uninsured coverage, Mr. Kaushal knew or ought to have known by August 2008 when he left his employment that he had a tort claim. Aviva

expressly rejected any suggestion that Mr. Kaushal did not appreciate the extent of his impairment until his consultations with Dr. Sawa in November 2010.

[21] As a consequence, Aviva concluded that Mr. Kaushal's claim is statute-bared and that there is no genuine issue requiring a trial in this matter. In support of its motion for summary judgment under Rule 20, counsel drew the court's attention to the requirement that each party "put its best foot forward" to demonstrate that there is a genuine issue for trial. A responding party is not "entitled to sit back and rely on the possibility that more favourable facts may develop at trial". Counsel also relies on the Supreme Court of Canada's decision in *Hryniak* v. *Mauldin,* 2014 SCC 7 as well as a number of other preceding cases for the proposition that summary judgment shall be granted where the motion allows the Judge to reach a fair and just determination on the merits of the claim.

b) Mr. Kaushal's Responding Position

[22] In response to Aviva's motion, counsel for Kaushal said that the issue of the applicable limitation period is a genuine issue for trial. Counsel offered three competing theories on the applicable date for the purposes of determining the limitation period. His primary argument was that Mr. Kaushal discovered that he had a claim against Aviva for uninsured coverage on January 22, 2010, when Unifund advised that Mr. Ampabeng was uninsured at the time of the accident. Alternatively, counsel contended that Mr. Kaushal discovered that he sustained a

"threshold injury" on or after November 24, 2009, following his first consultation with Dr. Sawa. Counsel's third argument was that separate and apart from his other theories, the claim against Aviva for uninsured coverage does not begin to run until a plaintiff makes a legal valid demand for payment. In Mr. Kaushal's case, that did not happen until Aviva was served with the motion record to add Aviva as a defendant to the action.

[23] The issue for my determination comes down to one question: Is Mr. Kaushal's claim against Aviva statute barred by operation of the *Limitations Act,* such there is no genuine issue requiring a trial? The constitutive elements of that inquiry are the following: a) when is there a genuine issue for trial; and b) what is the operative limitation period for Mr. Kaushal as it relates to his claim against Aviva.

c) The Law: Genuine Issue for Trial

[24] In my consideration of the chronology in this case, the factual background, the submissions of counsel, and the various cases on which counsel rely, I conclude that the issue of the applicable limitation period is a genuine issue for trial.

[25] Rule 20 of the Rules sets out the requirements that are to be satisfied for summary judgment to issue. Rule 20.04(2) specifically provides:

> (2) The court shall grant summary judgment if,
> (a) the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence; or

[26] Rule 20.04 (2.1) provides:

> In determining under clause (2)(a) whether there is a genuine issue requiring a trial, the court shall consider the evidence submitted by the parties and, if the determination is being made by a judge, the judge may exercise any of the following powers for the purpose, unless it is in the interest for such powers to be exercised only at a trial:
>
> 1. Weighing the evidence.
> 2. Evaluating the credibility of a deponent.
> 3. Drawing any reasonable inference from the evidence. O. Reg. 438/08, s. 13 (3).

[27] In *Hryniak* v. *Mauldin,* the Supreme Court of Canada concluded that a summary judgment shall be granted where the motion allows the Judge to reach a fair and just determination on the merits of the claim. The process is intended to allow a judge to find the necessary facts to resolve a dispute, apply the law to the facts, and to achieve a result that is proportionate, more expeditious and less expensive than a trial would otherwise be. This is outlined in paragraphs 49 and 50 of that decision:

> **[49]** There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.
>
> **[50]** These principles are interconnected and all speak to whether summary judgment will provide a fair and just adjudication. When a summary judgment motion allows the judge to find the necessary facts and resolve the dispute, proceeding to trial that does not give a judge

> confidence in her conclusions can never be the proportionate way to resolve a dispute. It bears reiterating that the standard for fairness is not whether the process is an exhaustive as a trial, but whether it gives the judge confidence that she can find the necessary facts and apply the relevant legal principles so as to resolve the dispute.

[28] See also *Danos* v. *BMW Group Financial Services, A division of BMW Canada Inc.* [2014] ONSC 2060 at para.24, *Beatty* v. *Best Theratronics Ltd.* 2014 ONSC 3376, and *Cochrane* v. *Kawartha Lakes (City) Police Services Board* 2014 ONSC 1361.

[29] When it comes right down to it, there will be no genuine issue requiring a trial if the summary judgment process provides the court with the evidence necessary to fairly and justly adjudicate the dispute and it constitutes a timely, affordable and proportionate procedure, see *Cochrane* v. *Kawartha* at para.27. The evidence before the court must represent "the best foot forward" and indeed, the court is entitled to assume that the record before it contains all of the evidence that a party would present at trial, see *Sweda Farms Ltd.* v. *Egg Farmers of Ontario*.

[30] Turning to this case, the evidence, accepted as "the best foot forward" does not provide me with the evidence I need to conclude that Mr. Kaushal's claim against Aviva is statute barred. Rather, the evidence points to the possibility of at least two and a possibly a third discoverability date that may

apply to a limitation analysis and the determination of when the limitation period would begin to accrue.

[31] Insofar as the possible limitation periods are concerned, the relevant sections of the *Insurance Act* that are engaged by the issue of limitations are sections 4 and 5 of the *Limitations Act, 2002* c.L-24, as amended, and s.267.5(5) of the *Insurance Act,* R.S.O. 1990, c.I.8. Section 4 of the *Limitations Act* provides the basic limitation period for two years from the day the claim was discovered unless otherwise provided in the *Act:*

> **Basic limitation period**
>
> **4.** Unless this *Act* provides otherwise, a proceeding shall not be commenced in respect of a claim after the second anniversary of the day on which the claim was discovered. 2002, c. 24, Sched. B, s. 4.

[32] Section 5 of the *Act* defines discoverability as follows:

> **Discovery**
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> *5.(1)* A claim is discovered on the earlier of,
>
> (a) the day on which the person with the claim first knew,
>
> (i) that the injury, loss or damage had occurred,
>
> (ii) that the injury, loss or damage was caused by or contributed to by an act or omission,
>
> (iii) that the act or omission was that of the person against whom the claim is made, and
>
> (iv) that, having regard to the nature of the injury, loss or damage, a proceeding would be an appropriate means to seek to remedy it; and

> (b) the day on which a reasonable person with the abilities and in the circumstances of the person with the claim first ought to have known of the matters referred to in clause (a). 2002, c. 24, Sched. B, s. 5 (1)

[33] In light of s. 5(2), a claimant is presumed to have known the elements for his or her claim on the day the events that are the subject of a claim occur. To rebut that presumption, the claimant must meet both a subjective and objective standard, see *Zhu v. Matador and Vali*, 2015 ONSC 178 and *Huang v. Mai*, 2014 ONSC 1156.

[34] As noted by Justice Perrell in *Zhu*:

> "Practically speaking, applying s. 5(2) of the *Limitations Act*, 2002 to any case and focusing on the commencement of the running of the limitation period means that for the claimant to prove that his or her claim is timely, the claimant must prove that he or she subjectively and objectively did not discover the claim in the period between the events giving rise to the claim and a date that is two years before an action was commenced; otherwise the two year period will begin at the date of the event and end at the second anniversary of the event.

[35] Applying this analysis to the discoverability of Mr. Ampabeng's insurance coverage I find that on the evidence before me, Mr. Kaushal discovered the true situation on January 22, 2010, when Unifund advised Mr. Kaushal's counsel that Mr. Ampabeng was not insured. In reaching this conclusion I have weighed very carefully Mr. Kaushal's answers to the questions at his examination for discovery that he knew that there was a problem with Mr. Ampabeng's insurance, against the formal Self-Reporting Collision Report, which clearly identified Mr.

Ampabeng's insurance company as well as a policy no. As an official document, the report is sufficient to put to rest any suspicions that a reasonable person might have had at the outset. In other words, even if Mr. Kaushal thought he heard something different in his exchange with the police, it is reasonable to draw the inference that the question about the insurance coverage was resolved because it was addressed in the Collision Report.

[36] With respect, I am unable to agree with Aviva's contention essentially, that Mr. Kaushal's answer at his examination for discovery trumped the formal report from the Collision Centre. I cannot draw such an inference on the record before me. To do so would be neither fair nor just. Similarly, to require due diligence over and above the formal documentation that Mr. Kaushal received would be to impose an unduly harsh burden on Mr. Kaushal.

[37] Insofar as Aviva placed significant emphasis on the failure of Mr. Kaushal's counsel to respond to inquiries by Aviva after January 22, 2010 as well as the various representations by Mr. Kaushal's counsel about planning to bring a motion to add Aviva and then failing to pursue that for 18 months, those facts are not relevant to the determination of the limitations period because they post-dated the January 22, 2010 date. I therefore do not have to be concerned with counsel's conduct because with January 22, 2010 as the date from which the

limitation period occurred, the addition of Aviva in September 2011 is well within the requirements of the *Limitation Act*.

[38] If I am incorrect in my conclusion concerning the discoverability of Mr. Ampabeng's uninsured status, Mr. Kaushal's alternative argument in relation to the discoverability of his "threshold claim" is equally compelling. On this theory, I am unable to accept Aviva's contention that Mr. Kaushal knew or ought to have known at the very latest by the time he quit his job, in August 2008, that he was suffering from a serious impairment that would meet the threshold requirements of the *Insurance Act*.

[39] In this regard it is useful to note the requirements of s. 267.5(5):

Subsection 267.5(5) of the *Insurance Act* provides:

> (5) Despite any other *Act* and subject to subsections (6) and (6.1), the owner of an automobile, the occupants of an automobile and any person present at the incident are not liable in an action in Ontario for damages for non-pecuniary loss, including damages for non-pecuniary loss under clause 61 (2) (e) of the *Family Law Act*, from bodily injury or death arising directly or indirectly from the use or operation of the automobile, unless as a result of the use or operation of the automobile the injured person has died or has sustained,
>
> (a) permanent serious disfigurement; or
>
> (b) permanent serious impairment of an important physical, mental or psychological function. 1996, c. 21, s. 29; 2011, c. 9, Sched. 21, s. 3 (3).

[40] It is also useful to review s. 4.1, 4.2 and 4.3 O. Reg. 461/96

> 4.1 For the purposes of section 267.5 of the *Act*,

"permanent serious impairment of an important physical, mental or psychological function" means impairment of a person that meets the criteria set out in section 4.2. O. Reg. 381/03, s. 1.

4.2 (1) A person suffers from permanent serious impairment of an important physical, mental or psychological function if all of the following criteria are met:

1. The impairment must,

    i. substantially interfere with the person's ability to continue his or her regular or usual employment, despite reasonable efforts to accommodate the person's impairment and the person's reasonable efforts to use the accommodation to allow the person to continue employment,

    ii. substantially interfere with the person's ability to continue training for a career in a field in which the person was being trained before the incident, despite reasonable efforts to accommodate the person's impairment and the person's reasonable efforts to use the accommodation to allow the person to continue his or her career training, or

    iii. substantially interfere with most of the usual activities of daily living, considering the person's age.

2. For the function that is impaired to be an important function of the impaired person, the function must,

    i. be necessary to perform the activities that are essential tasks of the person's regular or usual employment, taking into account reasonable efforts to accommodate the person's impairment and the person's reasonable efforts to use the accommodation to allow the person to continue employment,

    ii. be necessary to perform the activities that are essential tasks of the person's training for a career in a field in which the person was being trained before the incident, taking into account reasonable efforts to accommodate the person's impairment and the person's reasonable efforts to use the accommodation to allow the person to continue his or her career training,

    iii. be necessary for the person to provide for his or her own care or well-being, or

    iv. be important to the usual activities of daily living, considering the person's age.

3. For the impairment to be permanent, the impairment must,

    i. have been continuous since the incident and must, based on medical evidence and subject to the person reasonably participating in the recommended treatment of the impairment, be expected not to substantially improve,

    ii. continue to meet the criteria in paragraph 1, and

iii. be of a nature that is expected to continue without substantial improvement when sustained by persons in similar circumstances. O. Reg. 381/03, s. 1.

(2) This section applies with respect to any incident that occurs on or after October 1, 2003. O. Reg. 381/03, s. 1.

EVIDENCE ADDUCED TO PROVE PERMANENT SERIOUS IMPAIRMENT OF AN IMPORTANT PHYSICAL, MENTAL OR PSYCHOLOGICAL FUNCTION

4.3 (1) A person shall, in addition to any other evidence, adduce the evidence set out in this section to support the person's claim that he or she has sustained permanent serious impairment of an important physical, mental or psychological function for the purposes of section 267.5 of the Act. O. Reg. 381/03, s. 1.

(2) The person shall adduce evidence of one or more physicians, in accordance with this section, that explains,

(a) the nature of the impairment;

(b) the permanence of the impairment;

(c) the specific function that is impaired; and

(d) the importance of the specific function to the person. O. Reg. 381/03, s. 1.

(3) The evidence of the physician,

(a) shall be adduced by a physician who is trained for and experienced in the assessment or treatment of the type of impairment that is alleged; and

(b) shall be based on medical evidence, in accordance with generally accepted guidelines or standards of the practice of medicine. O. Reg. 381/03, s. 1.

(4) The evidence of the physician shall include a conclusion that the impairment is directly or indirectly sustained as the result of the use or operation of an automobile. O. Reg. 381/03, s. 1.

(5) In addition to the evidence of the physician, the person shall adduce evidence that corroborates the change in the function that is alleged to be a permanent serious impairment of an important physical, mental or psychological function. O. Reg. 381/03, s. 1.

(6) This section applies with respect to any incident that occurs on or after October 1, 2003. O. Reg. 381/03, s. 1.

[41] Mr. Kaushal may have stopped working in August 2008 because of his injuries, but there is no evidence before this court that Mr. Kaushal discovered and sustained a permanent serious impairment of an important physical, mental or psychological function at that time. Regulation 4.2(1)(3) requires that for an

impairment to be permanent, the impairment must be "based on medical evidence and subject to the person reasonably participating in the recommended treatment of the impairment…".

[42] Mr. Kaushal did not have such medical evidence in August 2008. The chronology of investigations reveals a number of investigations underway well into 2009 and even 2010. The accident benefits were stopped in the fall of 2008. Somebody must have thought that Mr. Kaushal was getting better so as not to require further benefits that would put the requirement that the impairment be continuous into question. On both an objective and subjective standard the possibility that Mr. Kaushal could discover a "threshold claim" by August 2008 is simply not sustainable.

[43] Having regard to all the investigations concerning Mr. Kaushal's difficulties I find that the earliest Mr. Kaushal would have or ought to have discovered that he had a "threshold claim" would have been soon after November 24, 2009, following Dr. Sawa's assessment. It was at that time that a medical practitioner clarified for Mr. Kaushal the source of his problems and rules out surgery as a way of treating him. Although I note that Mr. Kaushal's own evidence is that he only appreciated his condition following his second visit to Dr. Sawa, in November 2010, I reject that as a proposed discoverability date given Dr. Sawa's assessment a year earlier. In any event, I do not need to reconcile the two

assessments by Dr. Sawa because a limitation period that would commence at the end of November 2009, would result in the conclusion that the addition of Aviva in September 2011, was within the permitted time limits.

[44] A variation of that conclusion would be to deem Mr. Kaushal to have had knowledge of his claim as of the date he commenced his action against Mr. Ampabeng. That would also be November 27, 2009, in which case the claim against Aviva would remain within the requirements of the *Limitations Act*.

[45] With respect to Mr. Kaushal's third argument, I need not explore that because of my analysis regarding the two alternative theories. In any event, in light of *Johnson v. Wunderlich* (2d) 600 (O.C.A.), that argument raised by Mr. Kaushal is suspect.

Conclusion

[46] For the above reasons, I dismiss Aviva's motion and I grant the relief sought by Mr. Kaushal in his cross-motion. I conclude that there is a genuine issue for trial about whether the action is statue-barred, whether the statutory threshold has been satisfied, and if so the extent of Mr. Kaushal's damages.

[47] I note further that since Aviva's arguments and motion revolved around the action being statute barred, my dismissal of the motion does not raise a situation

where it would make any sense to remain seized of this case as suggested in *Hryniak*. Rather, having cleared this hurdle, the parties may now proceed as they would in the normal course with the claim; see *Huang*, at para. 52.

[48] Regarding costs, if the parties cannot reach an agreement they may make submissions in writing, limited to two pages, double-spaced plus a Bill of Costs. Mr. Kaushal shall have until March 13, 2015, and Aviva may respond by March 27, 2015.

Tzimas J.

Date: March 9, 2015

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COUNSEL: Bill Scott, for the Plaintiff

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ENDORSEMENT

TZIMAS J.

DATE: March 9, 2015