

COURT OF APPEAL FOR ONTARIO

CITATION: Salisbury v. Sun Life Assurance Company of Canada
2013 ONCA 182
DATE: 20130325
DOCKET: C55837

Rosenberg, Tulloch and Lauwers JJ.A.

BETWEEN

Glynis Salisbury

Plaintiff/Appellant

and

Sun Life Assurance Company of Canada, Sunlife Financial and McMaster
University

Defendants/Respondents

Jillian Van Allen, for the appellant

Duncan J. McDuff, for the respondent, Sun Life Assurance Company of Canada

George Avraam and Cherrine Chow, for the respondent, McMaster University

Heard and released orally: March 22, 2013

On appeal from the order of Justice Dale Parayeski of the Superior Court of Justice, dated July 5, 2012.

ENDORSEMENT

[1] While there was some evidence that the plaintiff lacked the capacity to instruct counsel to commence the action, the application judge erred in principle in failing to consider the application of Rule 7. Rather than the action being dismissed it should have been stayed in accordance with Rule 15.02(4) and (5)

until an application could be made under Rule 7 for appointment of a litigation guardian.

[2] Accordingly, the appeal is allowed, the order dismissing that action set aside and an order issued staying the action pending an application for an order appointing a litigation guardian. If no application is made to appoint a litigation guardian within 90 days, the respondents may move under Rule 15.02 to dismiss the action or for appointment of the Public Guardian and Trustee under Rule 7.

[3] In accordance with Rule 15.02(5) no other steps may be taken without leave of the court. The costs order against Mr. Ferro will stand. On this record he commenced the action without the authority of a client competent to instruct the commencement of the action and has does nothing in the many months since that time to seek out a litigation guardian in this action. The appellant is entitled to her costs of the appeal fixed at \$7,500 inclusive of disbursements and HST payable by Sun Life. There will be no costs order against McMaster.

“M. Rosenberg J.A.”

“M. Tulloch J.A.”

“P. Lauwers J.A.”