CITATION: Steele v. Volpini, 2015 ONSC 2552
COURT FILE NO.: 09-9972 (Hamilton)
DATE: 2015/04/20

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N :	)	
	)	
Jacqueline Steele	)	*William G. Scott*, for the Plaintiff
	)	(responding party)
Plaintiff	)	
- and -	)	
	)	
Sandro Volpini, Sherwin-Williams Canada Inc. and Cumis General Insurance Company	)	*Clay S. Hunter*, for the Defendants, Sandro Volpini and Sherwin-Williams Canada Inc. (moving parties)
	)	
Defendants	)	
	)	
	)	
	)	HEARD: April 9, 2015

R. A. Lococo, J.

REASONS FOR DECISION

I. Factual background

[1] Sandro Volpini and Sherwin-Williams Canada Inc. have brought a motion, seeking dismissal for delay of Jacqueline Steele's action against them. In the alternative, they ask the court to set aside previous orders that validated service or permitted substitutional service of the Statement of Claim on them. Jacqueline Steele has brought a cross-motion to extend the time for service and validating service on Sherwin-Williams, if necessary.

[2] On February 19, 2007, a motor vehicle driven by Sandro Volpini collided from behind with a vehicle driven by Jaime Lynn Mallett. The owner of the Volpini vehicle was Sherwin-Williams, Mr. Volpini's employer. Jacqueline Steele, the mother of Ms. Mallett, was a passenger in her vehicle.

[3] Ms. Mallett and Ms. Steele both retained the law firm of Lou Anthony Ferro. Mr. Ferro's firm commenced separate actions on behalf of Ms. Mallett and Ms. Steele. The Mallett

Statement of Claim was issued on December 4, 2008 and the Steele Statement of Claim on March 12, 2009.

[4] The Mallett action proceeded in the ordinary course. Sherwin-Williams retained the law firm of Patterson, MacDougall LLP to defend that action. Patterson, MacDougall subsequently accepted service of the Mallett Statement of Claim on behalf of Mr. Volpini. Examinations for discovery occurred in September 2011. At the discoveries and prior to Mr. Volpini's examination, Sherwin-Williams and Mr. Volpini admitted liability, subject to seatbelt and threshold defences. The Mallett action ultimately settled following mediation in June 2012. The action was dismissed on consent in July 2012.

[5] In contrast, the Steele action has not proceeded beyond the filing of the Statement of Claim. According to the 2009 affidavit of service of Matthew Bunn (a process server then with Mr. Ferro's office), the Steele Statement of Claim was served on Sherwin-Williams in May 2009 by leaving it with the "team leader working at that time" at Sherwin-Williams' retail outlet in Grimsby. There was no response from Sherwin-Williams. According to Sherwin-Williams, the Steele Statement of Claim did not come to the attention of its management at that time.

[6] Mr. Bunn also deposed that in August 2009, there was an unsuccessful attempt to serve Mr. Volpini with the Steele Statement of Claim. However, no further steps were taken to advance the Steele action at that time.

[7] Mr. Ferro's affidavit dated March 13, 2013 filed in response to the motion provided an explanation for the lack of activity in the Steele action. Mr. Ferro was not cross-examined on his affidavit.

[8] Mr. Ferro deposed that at that time, his law firm was in the process of transferring paper files to electronic files in a new computer software programme. In doing so, the Steele file was not transferred and was designated in error as "closed". Mr. Ferro and his staff lost track of the file, and were unaware of it during the course of the Mallett action. Ferro had no recollection of the Steele action at the time of the Mallett discoveries in September 2011. In October 2011, it came to his attention that the Steele file had been erroneously designated as closed.

[9] No further steps were taken in the Steele action until July 2012, after the Mallett action had settled. On July 31, 2012, Mr. Ferro's law firm filed an *ex parte* motion seeking substitutional service on Mr. Volpini by sending the Steele Statement of Claim by ordinary mail to Sherwin-Williams' retail outlet in Grimsby and to the insurer of the vehicle driven by Mr. Volpini. In his affidavit filed in support of the *ex parte* motion, Mr. Ferro referred to the single unsuccessful attempt to serve Mr. Volpini with the Steele Statement of Claim in August 2009. He also referred to a previous unsuccessful attempt to serve Mr. Volpini with a Statement of

Claim in a related action arising out of the same accident (that is, the Mallett action). He deposed that service of the Statement of Claim in the related action was ultimately effected by sending it to Paterson, MacDougall, described as the representative of Sherwin-Williams. He also deposed that Mr. Volpini's whereabouts were not known, and that service of the Steele Statement of Claim on Sherwin-Williams had already been effected.

[10] On August 3, 3012, Justice Carpenter-Gunn made an order for substitutional service on Mr. Volpini. As permitted by that order, Mr. Volpini was served with the Steele Statement of Claim on August 23, 2012 by ordinary mail to the Sherwin-Williams outlet in Grimsby. As well, by letter dated August 17, 2012, a case manager with Mr. Ferro's office demanded that Sherwin-Williams immediately provide a defence to the Steele Statement of Claim served in May 2009. That letter stated that if a Statement of Defence was not provided within seven days, Sherwin-Williams would be noted in default.

[11] By letter dated August 22, 2012, in-house counsel in Sherwin-Williams' U.S. head office responded to the demand letter, stating that they were not aware of a Statement of Claim or service of that document on Sherwin-Williams. The letter asked for supporting documentation, and also requested confirmation that plaintiff's counsel would not pursue default proceedings while Sherman-Williams diligently attempted to resolve the matter.

[12] In a letter dated September 7, 2012, Paterson, MacDougall, advised Mr. Ferro that they had been retained by Sherwin-Williams and Mr. Volpini in relation to the Steele action. Among other things, the letter stated that the Steele Statement of Claim was not properly served on either Sherwin-Williams or Mr. Volpini. In that regard, the letter questioned the propriety of obtaining an *ex parte* order to permit substitutional service on Mr. Volpini when Mr. Ferro was well aware of Paterson, MacDougall's involvement in the related Mallett action as counsel for Sherwin-Williams and Mr. Volpini. The letter also advised that Paterson, MacDougall had instructions to bring motions to dismiss the Steele action for delay and to set aside the *ex parte* order for substitutional service on Mr. Volpini. As well, the letter requested confirmation that no further steps would be taken to note Sherwin-Williams or Mr. Volpini in default.

[13] Notwithstanding the letters from Sherwin-Williams and Paterson, MacDougall, Mr. Ferro proceeded with an *ex parte* motion to validate the May 2009 service of the Steele Statement of Claim on Sherwin-Williams. On September 24, 2012, Justice Carpenter-Gunn made an order validating the prior service on Sherwin-Williams.

[14] According to Mr. Ferro's affidavit dated September 18, 2012 in support of the *ex parte* motion, Mr. Ferro had in fact attempted to have Sherwin-Williams noted in default in early August 2012. However, the Registrar refused, on the basis that the affidavit of service did not

comply with rule 16.09 of the *Rules of Civil Procedure*,[1] in that the affidavit did not state that the document was left with the person who appeared to be "in control" of the place of business, as required by rule 16.02. Mr. Ferro also deposed that he believed that Sherwin-Williams had received the Steele Statement of Claim in May 2009, and that service was effected at that time. He also attached as an exhibit Justice Carpenter-Gunn's recent order for substitutional service on Mr. Volpini. The affidavit made no reference to recent correspondence with Sherwin-Williams and Paterson, MacDougall that called into question the service on Sherwin-Williams and Mr. Volpini.

[15] Mr. Ferro's office did not advise Paterson, MacDougall's office in advance of their intention to file the *ex parte* motion to validate service on Sherwin-Williams. However, by letter dated September 19, 2012, Mr. Ferro's office provided Paterson, MacDougall with documentation they had requested, including Mr. Bunn's 2009 affidavit of service on Sherwin-Williams. That letter also stated that plaintiff's counsel was "seeking court review of the affidavits." By letter dated September 20, 2012, Patterson, MacDougall asked for an explanation of what "seeking court review" meant, noting that Mr. Ferro's office was already on notice that Paterson, MacDougall had been retained, and that any notice of motion should be served on them.

[16] On October 4, 2012, Mr. Ferro's office provided Paterson, MacDougall with a copy of Justice Carpenter-Gunn's September 24 order. By letter dated October 5, 2012, Paterson, MacDougall expressed surprise that a motion to validate service on Sherwin-Williams would proceed in the face of their letter of September 20, 2012. They also advised that they had instructions to move to set aside that order.

[17] In a responding letter dated October 9, 2012, Mr. Ferro's office advised that they had made the *ex parte* motion prior to Paterson, MacDougall's September 20 letter. In their letter, Mr. Ferro's office agreed that the motion to set aside the *ex parte* order validating service on Sherwin-Williams should be heard at the same time as the other motions being brought by Sherwin-Williams and Mr. Volpini.

[18] Those motions were subsequently filed by Paterson, MacDougall on behalf of Sherwin-Williams and Mr. Volpini. In her response and cross-motion, Ms. Steele is represented by special counsel, not Mr. Ferro's firm.

---

[1] R.R.O. 1990, Reg. 194.

[19] With that background, the issues to be determined are as follows:

1. Dismissal for delay – Should the Steele action be dismissed for delay?

2. Setting aside *ex parte* orders for service – Should the *ex parte* orders validating service or permitting substitutional service of Sherwin-Williams and Mr. Volpini be set aside?

[20] I will deal with each of these issues in turn below.

III. Dismissal for delay

[21] Should the Steele action be dismissed for delay?

[22] Under rule 24.01 of the *Rules of Civil Procedure*, a defendant who is not in default may move to have an action dismissed for delay where the plaintiff has failed (a) to serve the statement of claim on all defendants within the prescribed time, or (b) to have noted in default any defendant who has failed to deliver a statement of defence, within 30 days of the default. As confirmed by the Ontario Court of Appeal in *Langenecker v. Sauvé,*[2] an action may be dismissed for delay under rule 24.01 without giving the plaintiff the opportunity to remedy the default if the court is satisfied that either:

1. The default has been intentional and contumelious, or

2. There has been delay for which the plaintiff or the plaintiff's lawyer was responsible which (a) is inordinate, (b) is inexcusable, and (c) gives rise to a substantial risk that a fair trial of the issues will not be possible because of the delay.

[23] According to counsel for the moving parties, dismissal of the Steele action for delay is justified on either of the bases set out above.

[24] To support dismissal on the first basis, he argued in particular that plaintiff's counsel had intentionally and without justification delayed taking steps to pursue the Steele action until after the Mallett action had been settled. He also argued that plaintiff's counsel had acted in a contumelious (or abusive) manner by improperly bringing motions for substitutional service or to validate service on the Defendants on an *ex parte* basis and without providing full and fair disclosure of all material facts.

[25] To support dismissal on the second basis, counsel for the moving parties relied on essentially the same arguments to support a finding that the delay was inordinate and inexcusable, arguing that the duration of the delay should be considered in the context of the improper conduct of plaintiff's counsel. He also argued that the plaintiff had failed to rebut the

[2] 2011 ONCA 803, [2011] O.J. No. 5777 at paras. 5-12.

presumption of prejudice arising from the delay. As well, in his submission, there had been actual prejudice to moving parties since they had made an admission of liability in the Mallett action, a step that they may not have taken had they been aware of the Steele action.

[26] Having reviewed Mr. Ferro's affidavits filed in support of the *ex parte* service motions, I consider the conduct of plaintiff's counsel to be troubling on its face. Subrule 37.07(2) permits a motion to proceed without notice "where the nature of the motion or the circumstances render service of the notice of motion impractical or necessary …." As a matter of common practice, motions relating to service (particularly substitutional service) proceed on an *ex parte* basis. However, in this case, at the time that the motion for substitutional service on Mr. Volpini was brought in July 2012, plaintiff's counsel was well aware that Paterson, MacDougall had been counsel for Mr. Volpini and Sherwin-Williams in the related Mallett action, which had settled within the previous month. In those circumstances, I see no obvious justification for failing to notify Paterson, MacDougal of the motion, or inquiring as to whether they would accept service on Mr. Volpini, as they had in the Mallett action.

[27] I find even more troubling the conduct of plaintiff's counsel relating to the subsequent *ex parte* motion to validate service on Sherwin-Williams. In that case, Mr. Ferro's firm had been placed on notice that Sherwin-William and Mr. Volpini had retained Paterson, MacDougall with respect to the Steele action itself. Plaintiff's counsel also had notice that the defendants were contesting the effectiveness of service. In the face of that, I see no obvious justification for the failure by plaintiff's to notify Paterson, MacDougall of the motion or to advise the court of the defendants' position on the issue of service, given the requirement for full and frank disclosure of all material facts in subrule 39.01(6).

[28] During oral submissions, I asked special counsel for the plaintiff to address the foregoing concerns, which had been raised by counsel for the moving parties. He responded that counsel for the moving parties had the opportunity to cross-examine Mr. Ferro on his affidavits, but had not done so. In that regard, he argued the court should not draw adverse inferences relating to the conduct of Mr. Ferro and his firm in the absence of an opportunity for Mr. Ferro to provide an explanation on cross-examination.

[29] To the extent that I make findings relating to the conduct of Mr. Ferro and his firm, I agree that I am entitled to take into account the fact Mr. Ferro was not cross-examined on his affidavits. However, in my view, that fact does not provide a complete answer with respect to any adverse findings I might otherwise make about his conduct.

[30] On a motion to dismiss an action for delay, the ultimate onus is on the moving parties to establish that dismissal of the action is justified. If the evidence provided by the moving parties gives rise to an inference that is adverse to the plaintiff or plaintiff's counsel, the plaintiff has the

opportunity to provide responding evidence to address any adverse inference that may otherwise be drawn, including any explanation that the plaintiff or her counsel may wish to provide. If the plaintiff or her counsel fails to provide an adequate explanation in the responding affidavit, the fact that the deponent was not cross-examined on the affidavit does not, in my view, inhibit the court's ability to make findings of fact based on the evidence filed on the motion, whether those findings are favourable or adverse to the plaintiff or its counsel.

[31] Nevertheless, having reviewed the evidence filed by the parties and considered the submissions of counsel, I have decided to dismiss the motion by Sherwin-Williams and Mr. Volpini for dismissal of the action for delay. In particular, I have concluded that the moving parties have not established that the dismissal is justified on either the first or second ground previously referred to.

[32] In its recent decision in *Faris v. Eftimovski*,[3] the Ontario Court of Appeal observed that that "a high threshold has been established to dismiss an action for delay under rule 24.01", reflecting judicial reluctance to deny the plaintiff an adjudication on the merits without clear justification. In that decision, the Court referred to its previous decision in *Langenecker v. Sauvé*, which included the following comments about the class of cases that merit dismissal based on delay that is intentional and contumelious:

> The first type of case … refers to those cases in which the delay is caused by the intentional conduct of the plaintiff or his counsel that demonstrates a disdain or disrespect for the court process. In dismissing cases which fall within this category, the court effectively declares that a continuation of the action in the face of the plaintiff's conduct would constitute an abuse of the court's process. These cases, thankfully rare, feature at least one, and usually serial violations of court orders.[4]

[33] In this case, there is no evidence to suggest that the plaintiff or her counsel intentionally chose not to pursue the Steele action when it went dormant in August 2009, following the unsuccessful attempt to serve Mr. Volpini with the Steele Statement of Claim. In making that finding, I took into account and accept the explanation provided in Mr. Ferro's affidavit that the Steele file was marked closed in error during the transfer of by Mr. Ferro's law firm of paper files to electronic files. However, according to Mr. Ferro's responding affidavit, he realized that the Steele file had been closed in error in October 2011, the month following completion of the Mallett discoveries. No steps were taken to revive the Steele action until late July 2012 after the Mallett action had been settled and discontinued, but no explanation was provided for that additional delay after the error was discovered. In all the circumstances, it is reasonable to draw

---

[3] 2013 ONCA 360, 363 D.L.R. (4th) 111 at para. 37.
[4] *Supra* at para. 6 (see footnote 2).

an inference that the decision to further delay reviving the Steele action was made for tactical reasons, and was therefore intentional, at least for the nine month period form October 2011 to July 2012. I am prepared to draw that inference in this case.

[34] Nevertheless, I have concluded that the moving parties have not established that the delay was contumelious. To paraphrase the *Langenecker* decision, this case, in my view, is not one of those rare cases where the delay was caused by conduct that demonstrates a disdain or disrespect for the court process. Although not determinative, it does not involve "serial violations of court orders." I certainly have reservations about the tactical decision to delay pursuing the Steele action until after the Mallett action had settled. However, those reservations do not rise to the level of justifying dismissal of the action on the basis of abuse of process. My most serious concerns about the conduct of plaintiff's counsel in fact arose from what was done once the Steele action was revived (the *ex parte* service motions), not from the delay itself, the intentional portion of which was relatively short.

[35] Turning now to the second ground for dismissing an action for delay, the following observations in *Langenecker v. Sauvé* are instructive:

> The second type of case that will justify an order dismissing for delay has three characteristics. The delay must be inordinate, inexcusable and such that it gives rise to a substantial risk that a fair trial of the issues in the litigation will not be possible because of the delay....
>
> The inordinance of the delay is measured simply by reference to the length of time from the commencement of the proceeding to the motion to dismiss....
>
> The requirement that the delay be "inexcusable" requires a determination of the reasons for the delay and an assessment of whether those reasons afford an adequate explanation for the delay.... [E]xplanations that are "reasonable and cogent" or "sensible and persuasive" will excuse the delay at least to the extent that an order dismissing the action would be inappropriate.
>
> In assessing the explanations offered, the court will consider not only the credibility of those explanations and the explanations offered for individual parts of the delay, but also the overall delay and the effect of the explanations considered as a whole....
>
> The third requirement is directed at the prejudice caused by the delay to the defence's ability to put its case forward for adjudication on the merits. Prejudice is inherent in long delays. Memories fade and fail, witnesses become unavailable, and documents and other potential exhibits are lost. The longer the delay, the stronger the inference of prejudice to the defence case flowing from that delay....

> In addition to the prejudice inherent in lengthy delays, a long delay can cause case-specific prejudice.[5]

[36] In this case, I have concluded that the moving parties have not established that the delay was inordinate or inexcusable. With respect to inordinateness, I agree with the analysis of special counsel for the plaintiff that the duration of the delay in this case (being somewhat over three years) is at the low end of the scale when compared to most reported cases in which actions have been dismissed for delay pursuant to rule 24.01.[6] With respect to whether the delay is inexcusable, based on my previous analysis relating to the first ground for dismissal, the delay in this case has been adequately explained except for the nine months from October 2011 to July 2012. However, consistent with the analysis in the *Langenecker* decision, I am not satisfied that the delay was inexcusable, taking into account "the overall delay and the effect of the explanations considered as a whole."

[37] In reaching the conclusion that the delay in this case was not inordinate or inexcusable, I considered the argument of defendants' counsel that I should take into account the conduct of Mr. Ferro and his firm with respect to the Steele action, including the *ex parte* motions they filed relating to service on Mr. Volpini and Sherwin-Williams. However, consistent with my conclusion relating to the first ground, that conduct while troubling does not persuade me that the delay in this case was inordinate or inexcusable.

[38] Given my conclusion that the delay was not inordinate or inexcusable, it is not necessary for me to consider the issue of prejudice in relation to the second ground. Had it been necessary to consider that issue, however, I would not have considered it appropriate to infer prejudice from the delay in this case, given its relatively short duration.

[39] Defendants' counsel also argued that there was actual prejudice in this case, relying on the affidavit evidence of one of his partners. That evidence referred, among other things, to the decision of Sherwin-Williams and Mr. Volpini to admit liability in the Mallett action without knowing about the Steele action. However, in my view, the moving parties have not established actual prejudice in this case. As noted by special counsel for the plaintiff, the accident in this case was a rear-end collision, where there can be little doubt of liability on the part of the moving parties. In addition, Sherwin-Williams and Mr. Volpini admitted liability in the Mallett action prior to the examination of Mr. Volpini without raising the issue of contributory negligence by

---

[5] *Ibid.* at paras. 7-[12].

[6] For example, see: *Woodheath Developments Ltd. v. Goldman* (2001), 56 O.R. (3d) 658 (S.C.), aff'd. (2003), 66 O.R. (3d) 731 (Div. Ct.); *Farhi Holdings Corp. v. Lambton (County)*, [2009] O.J. No. 5475 (S.C.); *Berg v. Robbins*, [2009] O.J. No. 2992 (S.C., granting leave to appeal to Div. Ct.), [2009] O.J. No. 6169 (Div. Ct); and *Perron v. Matthews & Associates Insurance Brokers (Thunder Bay) Ltd.*, [2001] O.J. No. 2677 (S.C.), [2002] O.J. No. 1935 (C.A.).

Ms. Mallett. In all the circumstances, I do not see how the delay has prejudiced moving parties in a manner that justify dismissing the Steele action. In particular, I fail to see how the delay gives rise to a substantial risk that a fair trial of the issues in the Steele action (rather than in the Mallett action) will not be possible because of the delay.

[40] Accordingly, the motion of Sherwin-Williams and Mr. Volpini to dismiss the Steele action for delay is dismissed.

IV. Setting aside ex parte orders for service

[41] Should the *ex parte* orders validating service or permitting substitutional service of Sherwin-Williams and Mr. Volpini be set aside?

[42] Under rule 37.14, a party that is affected by an order obtained on a motion without notice may move to set aside or vary the order. Counsel for the moving parties argued that the *ex parte* orders relating to service on Mr. Volpini and Sherwin-Williams should be set aside in this case, given the manner in which they were obtained. He also argued that the plaintiff's cross-motion to extend the time and validate service of the Statement of Claim on Sherwin-Williams should be dismissed, based on prejudice occasioned by the conduct of plaintiff's counsel and the delay in pursuing the action.

[43] As outlined previously, I share the concern raised by counsel for the moving parties about the conduct of plaintiff's counsel in obtaining of the service orders in this case without notice. I also share his concern about the adequacy of the disclosure provided in support of the motions. However, the case law makes it clear that on a motion to rescind or vary an *ex parte* order, the court is entitled to consider whether the order once made should be rescinded or varied, based on the evidence then before the court. As noted by the Ontario Court of Appeal in *Fretz v. Lafay*:[7]

> The motion is not an appeal, but is a substantive motion, and the question is not alone whether the order should have been made, but whether, having been made, it should, in view of any change in the state of affairs, or position of the parties, be rescinded….

[44] Given that state of affairs as they now stand, I have concluded that the *ex parte* orders of Justice Carpenter-Gunn relating to service of the Statement of Claim on Mr. Volpini and Sherwin-Williams should not be set aside. Once the Statement of Claim and the *ex parte* orders were served upon them and brought to the attention of their counsel, they were clearly aware of and able to respond to the Steele action. As defendants in the related Mallett action, they and their counsel were fully aware of the circumstances of the accident as they relate to the issue of liability. They were also aware that Ms. Steele was in the vehicle when the accident occurred.

[7] [1939] O.R. 273 at 275 (C.A.).

As well, in the plaintiff's material filed in response to this motion, Mr. Ferro provided extensive medical documentation relating to injuries Ms. Steele claims she suffered as a result of the accident. In his submissions, counsel for the moving parties has not raised specific instances of actual prejudice arising from the delay in making information relating to Ms. Steele's injuries available to the moving parties. Rather, in that respect, he relied on the inference of prejudice arising from the delay.

[45] At the end of the day, in order to justify setting aside the *ex parte* orders for service of the Statement of Claim and refusing the cross-motion to validate service, counsel for the moving parties was relying on essentially the same arguments as he did when he sought to have the Steele action dismissed for delay. Having failed on his motion to dismiss the action for delay, it would be incongruous if he were able to effectively terminate the Steele action by succeeding in having the *ex parte* service orders set aside without providing leave to remedy the resulting default. Given the conclusions I have reached on the issues of delay and prejudice on the motion to dismiss, I see no sufficient basis for terminating the action on another basis.

IV. Conclusion

[46] Based on the foregoing, an order will issue in the following terms:

1. The motion by Sandro Volpini and Sherwin-Williams Canada Inc. to dismiss the action for delay is dismissed.

2. The motion by Sandro Volpini and Sherwin-Williams Canada Inc. to set aside the orders of Justice Carpenter-Gunn dated August 3, 2012 and September 24, 2012 is dismissed.

3. Sandro Volpini and Sherwin-Williams Canada Inc. have leave to serve and file a Statement of Defence within 20 days of the taking out of a formal order in accordance with these Reasons for Decision.

4. Costs, if demanded and not settled by the parties, will be determined based on written submissions.

[47] When considering the issue of costs, it is relevant that the plaintiff has been the successful party with respect to these motions. However, it would be also be appropriate to take into account other considerations, including the conduct of the plaintiff and her litigation counsel.

[48] The parties may serve and file brief written submissions (not to exceed five pages) together with a bill of costs and any pertinent offers within 21 days. Each party may reply by brief written submissions within seven days. All such submissions are to be filed with the Trial

Coordinator in Hamilton and also forwarded to me at my chambers at 99 Church Street, 4th Floor, St. Catharines L2R 7N8. If no submissions are received within this timeframe, the parties will be deemed to have settled the issue of costs.

The Honourable Mr. Justice R.A. Lococo

Released: April 20, 2015

CITATION: Steele v. Volpini, 2015 ONSC 2552
COURT FILE NO.: 09-9972 (Hamilton)
DATE: 2015/04/20

SUPERIOR COURT OF JUSTICE - ONTARIO

B E T W E E N :

Jacqueline Steele

Plaintiff

- and -

Sandro Volpini, Sherwin-Williams Canada Inc. and Cumis General Insurance Company

Defendants

REASONS FOR DECISION

R. A. Lococo, J.

Released: April 20, 2015