

Case Name:
Dufour v. Zellers Inc.

Between
Fernande Dufour, plaintiff, and
Zellers Inc., defendant

[2004] O.J. No. 4605
Court File No. 01/5836

Ontario Superior Court of Justice
Lofchik J.

July 20, 2004.
(5 paras.)

Counsel:

T. Stayshyn for the Plaintiff

B. Roti for the Defendant

¶ 1 **LOFCHIK J.** (endorsement):— The assessment being requested is not by a health practitioner as defined in Section 105(1) of the Courts of Justice Act, nor is it at the request of a health practitioner acting on behalf of the defendant as a necessary aid to completing a medical assessment. In my view the reasoning of Master Dash in Campbell v. Colton [2002] O.J. No. 1183 is applicable to the facts of this case.

¶ 2 While the Plaintiff initially consented to an assessment by a particular individual it would appear that the proposed assessment went beyond the bounds of that assessment. In any event the Plaintiff was at liberty to withdraw her consent.

¶ 3 The evidence before me does not establish that an examination of the Plaintiff is necessary in order for a Defence expert to prepare a vocational assessment or future cost analysis.

¶ 4 The motion is dismissed.

¶ 5 **Plaintiff is entitled to costs in the amount of \$1000.00 payable forthwith.**

LOFCHIK J.

QL UPDATE: 20041117
cp/s/qw/qlaxc

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Case Name:

Dufour v. Zellers Inc.

Between

Fernande Dufour, plaintiff, and
Zellers Inc., defendant

[2004] O.J. No. 4094
Court File No. 01/5836

**Ontario Superior Court of Justice
Whitten J.**

June 7, 2004.
(4 paras.)

Counsel:

Ted Stayshyn, for the plaintiff.

Aimee Draper, for the defendant.

¶ 1 **WHITTEN J.** (endorsement):— There does appear to be delay in production on the part of the defence for example, the involvement of Ms. Bouchard from the perspective of the manager Malcovich, a fact hitherto not revealed.

¶ 2 There is also an apparent lack of candor, with respect to the latest defence assessment in terms of the time necessary, the persons necessary. I am left with the distinct impression that the defence is "stonewalling".

¶ 3 This pre-trial was impossible to conduct because of this and the fact that there is a distinct lack of any commitment to any formal resolution. The pre-trial in this matter should be resumed, a date, should be set for that within 30 days of this date.

¶ 4 I order that costs be paid by the defence in the amount of \$1000.00 forthwith for the costs thrown away as a result of an inability to conduct a proper pre-trial.

WHITTEN J.

QL UPDATE: 20041014
cp/s/qw/qlsxx

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Case Name:

Dufour v. Zellers Inc.

Between

Fernande Dufour, plaintiff, and
Zellers Inc., defendant

[2004] O.J. No. 4096
Court File No. 01/5836

**Ontario Superior Court of Justice
Hamilton, Ontario
Festeryga J.**

June 29, 2004.
(4 paras.)

Counsel:

T. Stayshyn, for the plaintiff.

M. Foulds, for the defendant.

¶ 1 **FESTERYGA J.** (endorsement):— Mr. M. Foulds for the moving party, Mr. T. Stayshyn for the plaintiff.

¶ 2 This is a motion to add a third party by the defendant. The proposed third party was with the plaintiff when she was injured by a falling chair.

¶ 3 The motion is dismissed for the following reasons (a) the defendant has not moved expeditiously. The date of loss was 4 years ago. The defence was delivered 2 years ago. The defendant had sufficient facts about the proposed third party over a year ago when the motion could have been brought. (b) The plaintiff will suffer prejudice if the trial is delayed from the trial date in August 2004. She is 71 years old, had a heart attack in 1991 and suffers from a serious heart condition. Her medical condition is deteriorating and any delay would be unjust because it would prevent her from pursuing her remedies in a timely fashion. Plaintiff has already accommodated defence counsel by agreeing to the date in August 2004. Conclusion -- motion is dismissed.

¶ 4 **Costs, the defendant shall pay the costs of this motion to the plaintiff fixed at \$800.00 inclusive of GST and inclusive of disbursements within 30 days.**

FESTERYGA J.

QL UPDATE: 20041015

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Case Name:

Dufour v. Zellers Inc.

Between

Fernande Dufour, plaintiff, and
Zellers Inc., defendant

[2004] O.J. No. 4095
Court File No. 01/5836

**Ontario Superior Court of Justice
Hamilton, Ontario
Festeryga J.**

June 29, 2004.
(6 paras.)

Counsel:

T. Stayshyn, for the plaintiff.

M. Foulds, for the defendant.

¶ 1 **FESTERYGA J.** (endorsement):— Mr. T. Stayshyn for the Plaintiff, Mr. M. Foulds for the Defendant. I have been asked to rule on whether items 5, 6, of Schedule A are proper questions on discovery.

¶ 2 Re #5. The question is relevant and probative. If there was a propensity for chairs to fall before the incident in question, it goes to the very issues of making the premises reasonably safe. I order that the question be answered and any questions reasonably arising from the answer.

¶ 3 Re #6. For the reason set out in *Algoma v. Fraser* (Divisional Court) [1988] O.J. No 1849, I rule the question is a proper one on examinations for discovery. I order that the question be answered and any questions reasonably arising from the answer.

¶ 4 Order to issue as requested on item 2 of the notice motion. (Amended Statement of Claim)

¶ 5 Order to issue that the defendant make best efforts to produce the balance of the information in Schedule A within 20 days failing which the plaintiff may move ex-parte to strike the statement of defence.

¶ 6 **Costs, the defendant shall pay the plaintiff costs of this motion fixed at \$1500.00 inclusive of disbursements and inclusive of GST within 30 days.**