

COURT FILE NO.: CV-22-00001699-0000

SUPERIOR COURT OF JUSTICE – ONTARIO

7755 Hurontario Street, Brampton ON L6W 4T6

RE: PEDE, GIUSEPPE “JOSEPH”,
PEDE, MARIA, **Plaintiffs**

AND:

GURDIAL, CHRISTINA,
GURDIAL, JUSTIN, **Defendants**

BEFORE: Justice Wilkinson

COUNSEL: BASSILI, DANIEL, for the Plaintiffs
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NAPLES, ANTHONY, for the Defendant
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HEARD: August 12, 2025, by video conference

RULING ON MOTION

[1] The Plaintiffs bring this motion seeking leave to move their claim from a Superior Court of Justice action to a claim brought in Simplified Procedure under Rule 76. The Plaintiffs provide affidavit evidence that they are confident that the trial can be completed in five days or less to allow it to proceed under the Simplified Rules. Should the action be moved to Simplified Procedure, the Defendant’s jury notice will automatically be struck. The Plaintiffs also submit that it is in the interests of justice that the jury notice be struck.

[2] The Defendants oppose the relief sought. They submit that with the number of witnesses proposed, the trial cannot be completed in five days. In addition, the Defendants submit that it is not in the interests of justice to strike the jury notice. The Defendants submit that this motion should be dismissed.

Issues

1. Have the Plaintiffs established that that the trial of this action can be completed within five days?
2. Should the Jury Notice be struck?

Background

[3] The Plaintiffs' claim relates to a motor vehicle collision that occurred on June 16, 2020. The Plaintiffs are husband and wife, and both claim that they were injured in the collision, in which their vehicle was struck from behind by the Defendant motor vehicle. The Plaintiffs filed a Statement of Claim on June 16, 2022, seeking \$1,000,000 in damages.

[4] The Defendants served their Statement of Defence and Jury Notice on June 14, 2023.

[5] Examinations for discovery of the Plaintiffs took place on November 1, 2023. A subsequent mediation failed to resolve the action.

[6] On November 28, 2023, counsel for the Plaintiffs accepted the Defendants' offer to limit the Plaintiffs' claims to the \$1,000,000 policy limit, in exchange for an admission of liability.

[7] On April 21, 2025, the Plaintiffs requested the consent of the Defendants to continue the action within the Simplified Rules and to strike the Jury Notice. The Plaintiffs reduced their damages claimed to \$800,000 in the proposed Amended Statement of Claim, with each Plaintiff claiming \$200,000 damages against each of the two Defendants, as is permitted under Rules 76.02(2) and (2.1).

[8] Rule 76.02(7) states that an action that was not commenced under Rule 76 Simplified Procedure can continue under the rule if the consent of the parties is

filed; or if no consent is filed, if the plaintiff's pleading is amended under Rule 26 to comply with 76(1) and, all other claims, counterclaims, crossclaims and third party claims comply with the Rule.

[9] Juries are not permitted in actions proceeding under Rule 76.02.1.

[10] Rule 76.12(2) mandates that the length of a simplified procedure trial cannot be more than five days.

Issue #1 – Have the Plaintiffs established that the trial of this action can be completed within five days?

Position of the Plaintiffs

[11] The affidavit filed on behalf of the Plaintiffs states that their case at trial will involve testimony from both Plaintiffs, and up to four experts.

[12] The Plaintiffs submit that the subject matter for the trial is straight forward: causation and damages. Neither Plaintiff is making an income loss claim. However, both Plaintiffs are claiming pain and suffering and costs of future care.

[13] In their submissions, the Plaintiffs set out a proposed trial schedule as follows:

- Day one: administrative matters, motions, opening statements, and cross-examinations and re-examination of both Plaintiffs.
- Day two: lay witness cross examination – one hour; cross-examination and re-examine of four Plaintiff experts, one hour per expert.

- Day three: cross-examination and re-examination of potentially four defence experts, along with cross-examination and re-examination of two investigators.
- Day four: Closings – half a day;
- This schedule leaves 1 ½ days available if any of the evidence takes longer than anticipated in this schedule to complete the five days available for trial.

Position of the Defendants

[14] The Defendants submit that the Plaintiffs' proposed trial schedule is not realistic. The Defendants anticipate that this trial will take eight days. The Plaintiffs are claiming \$800,000 in damages. The Defendants argue that the causation issues and extent of damages need be properly explored, and it is unfair to the defence to expect them to cross examine all Plaintiff witnesses in an hour or less. In their trial management plan, the Defendants anticipate requiring three hours to cross-examine each of the Plaintiffs, and two hours to cross-examine each of the expert witnesses.

[15] Although the Defendants have admittedly liability collectively, there are still issues relating to apportionment of liability as between the two Defendants, since each Plaintiff can only claim up to \$200,000 against each Defendant. As well, time must be set aside to argue a threshold motion for each Plaintiff.

[16] I find that the Plaintiff's trial management plan does not allow sufficient time for the cross-examination of all the witnesses. The Plaintiffs have not established that this trial can be completed in five days, given that it is anticipated that there will be eight expert witnesses testifying, along with both Plaintiffs, two

investigators, and other lay witnesses. Accordingly, this case shall remain in the Superior Court.

Issue #2 – Should the Jury Notice be struck?

[17] Rule 26.01 of the *Rules of Civil Procedure* states that on motion at any stage of an action, the court shall grant leave to amend a pleading on such terms as are just, unless prejudice would result that could not be compensated for by costs or an adjournment.

[18] Rule 47.01 permits a party to deliver a Jury Notice, which mandates that issues of fact and assessments of damages be tried by a jury.

[19] Section 108(1) of the *Courts of Justice Act* permits a party to require that a Superior Court trial be tried by a jury. However, s.108(3) of the Act states that on motion the court may order that issues of fact or an assessment of damages may be tried without a jury.

[20] The Court of Appeal for Ontario confirmed in *Cowles v. Balac: 2006*, 83 OR (3d) 660, that the right to trial by jury in a civil case is a substantive right, and should not be interfered with, without just cause or cogent reasons: para.36. The test to be considered is if striking the jury is in the best interests of justice: *Cowles*, at para. 38.

[21] The Plaintiff submits that it is in the interests of justice that the jury notice be struck for the following reasons:

- a) Liability is admitted by the Defendants jointly;
- b) Neither Plaintiff is making an income loss claim;
- c) Discoveries were completed within the time allotted under simplified procedure;
- d) The matter has not yet been set down for trial;

- e) The issues in dispute do not warrant the resources and expense of a jury trial;
- f) There is no specific functional litigation disadvantage to the Defendants in having the case adjudicated by an impartial and independent judge instead of an impartial and independent jury; and
- g) Rule 26 permits amendments to a Statement of Claim, and Rule 76 permits Superior Court actions to be converted to Simplified Procedure actions.

[22] The Defendants submit that it is in the interests of justice that the jury notice not be struck for the following reasons:

- a) It is unfair to the Defendants to deprive them of their right to a jury trial, particularly given the quantum of \$800,000 being claimed by the Plaintiffs;
- b) That this matter is more complex than the Plaintiffs are suggesting, which is evidenced by the quantum of damages sought;
- c) Jury trials are an important aspect of our justice system;
- d) Juries have been found to be particularly well suited to cases involving issues of credibility: *Ismail v. Fleming*, 2018 ONSC 6780, at para. 45;
- e) The Plaintiffs ought to have determined their choice of forum at the time the pleadings were commenced, and that it is an abuse of process to now move the case to Simplified Procedure for strategic reasons;
- f) There are apportionment of liability issues as between the two Defendants that must be addressed; and
- g) The Plaintiffs desire to limit their cost exposure is not a sufficient reason to take away the Defendants' substantive right to a jury trial.

[23] Both sides presented cases supporting their respective positions. A review of the case law suggests that there is a significant amount of judicial discretion in

determining if a Plaintiff will be permitted to move their case from the Superior Court to Simplified Procedure. Each case will turn on its own facts and circumstances when determining if it is in the interests of justice to strike the jury notice. However, as I have already determined that this trial cannot be completed in five days, I am not required to address the secondary issue regarding the striking of the jury notice.

Costs

[24] The Defendants were successful on this motion, but did not upload a cost outline to Case Center. The Plaintiffs' cost outline suggests a partial indemnity fee of \$4,000. Presumably the Defendants' Bill of Costs would be even higher, as the Defendants prepared a factum and the Plaintiffs did not. However, Plaintiff's counsel's hourly rate of \$750 per hour is high for a lawyer with only twelve years of experience.

[25] Under the circumstances I find that an appropriate cost award for this motion on a partial indemnity basis is \$3,000 + HST = \$3,390 payable by the Plaintiffs to the Defendants within forty-five days.



Wilkinson J.