

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Fitzgerald v. Royal Sun Alliance Insurance Company, 2011 NSSC 132

Date: 20110331

Docket: SYDJC332089

Registry: Sydney

Between:

Jody Fitzgerald

Applicant

v.

Royal Sun Alliance Insurance Company of Canada

Respondent

LIBRARY HEADING

Judge: The Honourable Justice Frank Edwards

Heard: March 17, 2011, Nova Scotia

Subject: Motion for Summary Judgment CPR13
Insurance Law - Compliance with notice requirements of Policy - relief
under *Insurance Act*, s. 33
Limitations of Actions Act s.2(f)

Facts: Plaintiff brings action under Section D of Policy less than two months
following the expiration of the 2 year limit set out in the Policy.

Plaintiff claimed to have been standing on the tailboard of her pickup in a parking lot when her vehicle was bumped by another unidentified vehicle. The bump caused her to fall and sustain injuries. She believed she had no cause of action because she did not see and thus could not describe offending vehicle. She did not report the incident to the police or to her insurer. As soon as she became aware that she might have a cause of action, she retained Counsel to pursue her rights.

Issues:

- I. Is the Defendant entitled to Summary Judgment?
- II. Is the Plaintiff's claim forfeited because of her failure to comply with the Section D notice requirements of the Policy?
- III. Is the Plaintiff bound by the applicable 2 year limitation period?

Result:

- I. The Defendant is not entitled to summary judgment - there is a genuine issue of material fact requiring trial.**
- II. The Plaintiff's claim is not forfeited - s.33 of the *Evidence Act* gives Court discretion to grant relief against forfeiture where it would be inequitable to do otherwise.**
- III. Plaintiff is not bound by 2 year limitation period.**

In II and III, the prejudice caused to the Defendant by this delay is minimal to non-existent. The Plaintiff acted promptly as soon as she became aware that she had a possible cause of action.

Cases Noted:

Guarantee Co. Of North America v. Gordon Capital Corp., [1999] 3 S.C.R. 423 (S.C.C.); *Binder v. Royal Bank of Canada*, 2003 NSSC 174; *Canadian Equipment Sales & Service v. Continental Insurance Co.*, (Ont C.A.) Para. 30;

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.
QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.***