

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Zein v. Beauregard
BEFORE: Master Fortier

COUNSEL: Alan Clausi for the plaintiff/moving
Kelly Hart for the defendant/responding party

HEARD: March 26, 2019

ENDORSEMENT

- 1- This is a motion for an Order striking the Jury Notice served by the defendant after the close of pleadings and without leave of the court. The motion was scheduled by the Plaintiff on November 8, 2018.
- 2- This action arises out of a motor vehicle collision which occurred on November 20, 2015 in the City of Ottawa.
- 3- The Statement of Claim was issued in April 2016 the Statement of Defence was served in July 2016. Pleadings were closed in August, 2016.
- 4- Examinations for discovery of both parties were held in November, 2016.
- 5- An unsuccessful mediation took place in July 26, 2018.
- 6- On August 8, 2018, some two years after the close of pleadings, the defendant served a Jury Notice on the plaintiff.
- 7- There is no dispute that the defendant had not served a jury notice by the time pleadings were closed in August 2016 as required under Rule 47.01. Nor does

counsel for the defendant contest that the defendant never obtained leave to deliver the jury notice in this case.

- 8- Rather in his responding materials served on March 19, 2019, the defendant included a notice of motion, indicating that he will make a cross-motion seeking an Order granting leave nunc pro tunc to serve and file a Jury Notice. It was conceded by counsel for the defendant that the “cross motion” was not properly before the court today and he sought an adjournment of the plaintiff’s motion so that both the motion to strike and the cross-motion for leave could be dealt with at the same time at a later date.
- 9- Counsel for the plaintiff opposed the request for an adjournment. Counsel argued that the plaintiff’s motion is properly before the court and was scheduled over four months ago. The defendant had plenty of time serve and file his cross-motion in accordance with the Rules. I agree and deny the request for an adjournment.
- 10- The plaintiff’s motion for an order striking the Jury Notice delivered by the defendant in August 2018 pursuant to rule 47.02 (1) (b) is granted. The defendant did not serve the Jury Notice prior to the close of pleadings as required by Rule 47.01 nor did he seek leave of the court to serve the Jury Notice after the close of pleadings (Proper v. Nikore 2010 ONSC2307 (CanLII) at paragraph 9). Accordingly, the Jury Notice is struck.
- 11- Costs to the Plaintiff fixed at the sum of \$3,000 inclusive of HST and disbursements payable within 30 days.



Master Fortier