Existence of Disputed Facts Derails Summary Judgment

August 09, 2019

Summary judgment can be an effective pre-trial mechanism to dispose of an action. The outcome for the moving party may be: a) full or partial dismissal of the action; b) reverse summary judgment; or c) refusal to grant summary judgment. The recent Ontario Superior Court decision of *Hoddle v. Gelata,* 2019 ONSC 4047 illustrates the latter outcome where the existence of material disputed facts does not favour summary judgment.

Background

The underlying action dealt with a fall from the roof of a commercial self-storage facility. The defendant resided at the premises. The plaintiff went to visit the defendant at the premises. They decided to go out for a smoke and chose to do so on the roof of the building. The court later found that the defendant occupier invited the plaintiff to the roof. The parties entered the roof through a door that could not be opened from the outside. The plaintiff later either fell or jumped from the roof in attempting to leave the roof, and sued the defendant.

The defendant occupiers in this case moved for summary judgment. They argued that there was no genuine liability issue requiring trial.

Disputed Facts

The parties advanced different versions of events about their individual levels of intoxication prior to venturing on the roof and what occurred after discovering that the door could not be opened from the outside. The defendant's version of events was that he attempted to open the door as he had done on other occasions, while the plaintiff jumped from the roof. The plaintiff said that her foot slipped as she walked to the edge of the roof looking for alternate ways to exit the roof.

The parties also gave differing evidence about how long they were trapped on the roof. The court preferred the plaintiff's evidence and found that the parties were likely trapped for longer than the 45 minutes suggested by the defendant. Further, the court disagreed with the defendant that the plaintiff was responsible for her injuries when she ventured

away from the door, to the edge of the roof. The court found it unreasonable to expect the plaintiff to refrain from looking around to locate another exit in the circumstances.

The court also considered an engineering expert report adduced by the plaintiff. The report concluded that there may have been two potential Ontario Building Code breaches with the premises: not having a guard around the perimeter of the roof and not having an alternative reasonable means to get off the roof, in addition to the door. While it is not clear if the defendants had the opportunity to cross-examine the engineering expert, it would seem that this report gave further support to the finding that there were genuine liability issues militating against the matter being decided via summary judgment.

By

Natalie D. Kolos, Edona C. Vila

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary
Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa
World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver
1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal
1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription

preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.