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When Are Conclusions of Law Made in a Summary Judgment Motion Binding on the Trial Judge?

As summary judgment motions become the more common way for parties to resolve their disputes, Ontario Courts have had to deal with the consequences of a failed motion. A recent decision of the Ontario Court of Appeal, *Skunk v. Ketash*, 2016 ONCA 841, answers the question of whether a judge who dismisses a motion for summary judgment has in fact made conclusive rulings of law that will later bind the trial judge.

Skunk involved a motor vehicle accident. The plaintiff was a passenger in a car owned by his wife, but driven by his friend. In addition to bringing an action against his friend, the plaintiff sued his insurer pursuant to the uninsured provisions of the policy. He argued that since his friend was driving his wife's vehicle at the time of the accident without his wife's consent and his friend did not have insurance, he was entitled to coverage under his uninsured automobile policy. The insurer brought a motion for summary judgment to dismiss the husband's claim.

The issue before the motions judge was whether the vehicle was excluded from the definition of "uninsured automobile" under the

policy because the car was owned by the insured's spouse, i.e. wife. The plaintiff argued that a vehicle taken without the consent of the owner was an "uninsured automobile" under the policy.

The motions judge upheld the plaintiff's position and dismissed the insurer's motion for summary judgment:

I therefore conclude that vehicles owned by the insured or spouse, if insured, are "uninsured automobiles" when taken without consent. Therefore, I conclude that [the friend], if she took the vehicle without consent, is an "inadequately insured motorist" under the [insurance policy].

...

As such, I conclude that there **may** be coverage and Jevco's motion for summary judgment is dismissed [**emphasis added**]

The insurer appealed the motion judge's ruling to the Court of Appeal. One of the issues on appeal was whether the Court of Appeal lacked the jurisdiction to hear the matter because the decision was not a "final" order. The plaintiff argued that the



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motions judge did not make a final ruling on the central legal issue in dismissing the insurer's motion for summary judgment and therefore the order was interlocutory. As such, the plaintiff argued that the Divisional Court, and not the Court of Appeal, was the proper forum for the appeal and that the appeal could only be heard with leave of the Divisional Court.

The Court of Appeal agreed with the plaintiff and quashed the appeal for lack of jurisdiction. It held that the motion judge did not make a final ruling on the issue of whether an automobile that has been taken without the consent of the owner is excluded from the definition of "uninsured automobile" where it is owned by the insured or the insured's spouse. The motion judge's ruling on the legal issue was therefore not a final order.

When Do Summary Judgment Judges Make Final, Binding Orders?

The Court of Appeal began its analysis by citing its previous decision, *Ashak v. Ontario*, 2013 ONCA 375, for the proposition that, in general, an order dismissing a motion for summary judgment is not a final order because the decision only determines that a genuine issue for trial exists.

However, where a judge makes findings of fact in the course of dismissing a motion for summary judgment, those findings of fact do not have any binding effect in a further proceeding unless the motions judge invokes Rule 20.05(1). This

Rule provides that where summary judgment is refused or is granted in part, the court "may make an order specifying what material facts are not in dispute and defining the issues to be tried". In cases where the motions judge exercises her power under Rule 20.05(1), however, the Court of Appeal noted that "she should specifically say so, and the order should refer to r.20.05(1)".

The Court then observed that these very same principles apply to rulings of law. That is, generally, where a motions judge makes findings on a question of law in dismissing a motion for summary judgment, those determinations should not be considered binding on subsequent proceedings. They are not final orders. However, if the motions judge invokes Rule 20.04(4) in her ruling, then her legal determinations may very well be binding. Rule 20.04(4) provides that where the court is satisfied that the only genuine issue for trial is a question of law, the court "may determine the question and grant judgment accordingly".

The Court summarized the approach to binding rulings of law in the dismissal of a summary judgment motion as follows:

In an attempt to provide greater clarity, I would summarize the effect of this court's jurisprudence as follows:

1. The general rule is that an order dismissing a motion for summary judgment is an interlocutory, and not a final, order.

2. If a party argues that the motion judge made a final, binding determination of law that disposes of the substantive rights of one of the parties ("Binding Legal Determination") in dismissing the summary judgment motion, then this court will consider whether the motion judge's order invokes r.20.04(4) and references the legal determination that the party argues is a Binding Legal Determination.

3. If the order does not invoke r.20.04(4) and reference[s] the legal determination that the party argues is a Binding Legal Determination, the court will usually consider whether the precise scope of the point of law determined by the motion judge is clear and whether it is clear that the motion judge intended that her determination be binding on the parties at trial.

The Court therefore concluded that in the absence of an express statement that the motion judge intends her legal finding to be binding on the parties at trial, the Court will presume that no such binding conclusion has been made and the motion judge was "simply explaining why she concluded that there is a genuine issue requiring a trial".

In this case, the Court held that it was not at all clear that the motions judge intended her ruling on the "uninsured" provision to be binding at trial. The issue was not *res judicata* at trial and therefore the motion judge's order was not final in nature.

The Court observed that the motion judge did not invoke Rule 20.04(4). Moreover, the judge's analysis of the policy and legal question at issue was not intended to be final and binding on the parties:

Despite expressing a "conclusion" about the interpretation of the Endorsement in his reasons, the motion judge simply determined that there "may" be coverage. As I explain below, it is not clear that the motion judge did not simply conclude that there was a genuine issue for trial as whether or not [the plaintiff] is entitled to coverage.

Conclusion

The Court of Appeal's decision in *Skunk* establishes that any conclusions of law reached in the dismissal of a summary judgment motion are not presumptively binding at trial. The motions judge must expressly state

that she intends her ruling to be binding in a subsequent proceeding, preferably by invoking Rule 20.04(4).

These principles act as a stark warning to counsel who argue summary judgment motions: if you seek to have the motions judge make a final and binding conclusion of law or fact, you must ensure this is made clear. Otherwise, you may face an argument that the motion judge's conclusions were confined to the motion and have no further implications for the parties.