

*Case Name:*

**Sethi v. Armstrong**

**Between**

**Arun Kumar Sethi, Applicant, and  
Jerry R. Armstrong and Dufferin Construction Company, a  
Division of St. Lawrence Cement Inc., Respondents**

[2010] O.J. No. 5425

2010 ONSC 6904

Court File No. 04-CV-268923CM1

Ontario Superior Court of Justice

**R.S. Echlin J.**

Heard: October 25, 2010.

Judgment: October 25, 2010.

(12 paras.)

**Counsel:**

L.L. Dizgun, for the Applicant.

M. Forget, for the Respondents.

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**ENDORSEMENT REASONS FOR DECISION**

**1 R.S. ECHLIN J.:**-- The Applicant has brought this motion seeking to strike a Jury Notice for a trial anticipated to be 4 - 5 weeks in length commencing on March 28, 2011.

**2** The Applicant has argued that this matter is too complex for a jury to hear as it potentially involves allegations of chronic pain with potentially conflicting expert reports from the defendants.

**3** The overwhelming weight of authority leads me to the conclusion that this matter is better handled by the Trial Judge. See: *Hunt v. Sutton* (2002) 60 O.R. (3d) 665 (C.A.) and *McDonald-Weoxit v. O'Herlihy*, [2007] O.J. No. 478 (C.A.).

4 I have considered a number of other cases and am of a similar view as Lane J. in *Wood v. Audia*, [2004] O.J. No. 1478 (S.C.) and a host of other similar cases.

5 This Court is asked to balance the interests of efficiency (and in that regard, I lean towards an early determination of this issue before trial) against fairness and fullness of evidence upon which to make a proper determination.

6 At this point, on the question of complexity, such issue is a possibility and not apparent.

7 The Applicant bears the burden in the application. I have not been satisfied at this point of the complexity nor the existence of a change in circumstances. The right to a jury is a significant right that ought not to be interfered with lightly.

8 This case is in the class of cases frequently tried by juries. However, the Plaintiff is entitled to a review of this matter by a trial judge.

9 I therefore dismiss this application at this time without prejudice to the Plaintiff's right to bring a motion before the trial judge or at a time when all evidence is more clearly before the Court. While it may be premature to bring such motion now, nothing in this Endorsement should lead the reader to conclude that I have made any comments as findings on the issue of complexity. That is solely for the trial judge to determine, as being in a better position to do so as evidence is received.

10 This Endorsement should be read as giving the Applicants the absolute right to bring such application before the Trial Judge at a later time, should it be deemed appropriate.

11 The parties have jointly submitted that the quantum of costs on this motion should be in the amount of \$4,500.00. I grant the defendants such cost award, but stay the payment of same and make it subject to review by the Trial Judge hearing such further motion to strike the jury. Such award may be varied or set-off in the discretion of the Trial Judge.

12 If no such further application is brought, it shall be paid within 30 days of the end of proceedings, including any appeals, and shall be inclusive of disbursements and applicable taxes.

R.S. ECHLIN J.

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