

**Westlaw Delivery Summary Report for ROWE,ROGER**

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2000 CarswellOnt 775

Drummond v. Tempo Paint & Varnish Co.

Ena Drummond, Complainant (Appellant) and Tempo Paint and Varnish Co. (Division of Tower Chemicals Ltd.), Bernard Jakobson and Hugh Kerr, Respondents

Ontario Court of Justice (General Division) [Divisional Court]

O'Driscoll J.

Heard: March 10, 2000

Judgment: March 16, 2000

Docket: Toronto 81/99

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Counsel: Roger Rodrigues, for Appellant's Solicitor of Record, Roger Rowe.

J. Michael Mulroy, for Respondents.

Alison Baxter, for Ontario Legal Aid Plan, Statutory Claimaint.

Subject: Civil Practice and Procedure

Barristers and solicitors --- Solicitor's lien -- Statutory charging order -- Moneys in court.

Rules considered:

Rules of Civil Procedure, R.R.O. 1990, Reg. 194

R. 49.09 -- referred to

MOTION by plaintiff's solicitor for order permitting payment of settlement money into court; CROSS-MOTION by defendants for judgment in accordance with settlement.

***O'Driscoll J.:***

1 Before me this morning is a motion by counsel for Mr. Roger Rowe, solicitor of record for Ms. Ena Drummond, that he be permitted to pay into Court the sum of \$47,500.00, which he received by way of settlement money. There is also a cross-motion by the respondents seeking judgment in accordance with the minutes of settlement in the terms of the offer that was accepted.

2 Ms. Drummond filed a complaint against the respondents with the Ontario Human Rights Commission

(OHRC). The Board of Inquiry heard evidence and rendered a decision in her favour on June 18, 1998, and a further decision, as to remedy, on January 6, 1999.

3 On June 21, 1996, Ms. Drummond received Ontario Legal Certificate No. 1939679. That certificate has written on its face that the Ontario Legal Aid Plan has a lien and a charge against monies recovered, so that the Plan will be able to reimburse itself for the money paid out to the lawyer acting for the legally aided person.

4 After the January 6, 1999 decision of the Board of Inquiry, counsel for Ms. Drummond, namely Mr. Rowe, and counsel for the respondents, sat down and negotiated a settlement pursuant to the terms of the January 6, 1999 order, especially page 15. Counsel agreed on a sum of \$47,500.00. This amount was not opposed by the OHRC. The material filed on this motion convinces me beyond any doubt that Ms. Drummond agreed to that amount and instructed Mr. Rowe to settle at that sum.

5 Mr. I. Balter, acting for the respondents, prepared a cheque payable to Mr. Rowe, in trust, and sent it to Mr. Rowe with the usual instructions to hold it in escrow until the necessary releases were signed by Ms. Drummond. At this point, a dispute arose between Mr. Rowe and Ms. Drummond. By the terms of the legal aid certificate, Mr. Rowe is required to hold back the amount of his accounts to Legal Aid, i.e. Legal Aid's charge on the funds. Ms. Drummond wanted Mr. Rowe to release to her the entire \$47,500.00. Thus, the impasse, thus the motion and the cross-motion.

6 The material persuades me that Mr. Rowe made the settlement with Ms. Drummond's authority and concurrence. Indeed, Ms. Drummond does not quarrel with the \$47,500.00 figure, but she does not want to pay Mr. Rowe. Ms. Drummond's position holds all others hostage.

7 Orders to go:

(1) Mr. Rowe to pay into Court to the credit of this action, the sum of \$47,500.00 which he received from Mr. Balter, together with any interest that may have accrued;

(2) judgment to issue in favour of Ms. Drummond against the defendants in the amount of \$47,500.00, as per Rule 49.09;

(3) the money paid into Court is subject to Ontario Legal Aid Plan charge as per Certificate 139679, in an amount to be determined by Legal Aid's assessment officer or by a consent of Mr. Rowe, Ms. Drummond and Legal Aid;

(4) when Legal Aid's charge has been settled as to an amount, that sum should be paid out of court to Legal Aid. Thereafter, the balance of the money in court, plus any interest, should be paid out to Ms. Drummond;

(5) Action 16233/91 commenced on March 4, 1991, by Ms. Drummond is dismissed;

(6) The notice of appeal, dated February 5, 1999, and filed by Ms. Drummond in the Divisional Court office on February 4, 1999, as No. 81/99, is dismissed.

8 Counsel for Mr. Rowe does not seek costs nor does Legal Aid. Counsel for the respondents, namely the defendants, asks for costs in the sum of \$2,000.00.

9 The endorsement continues as follows:

Counsel for the respondents asks for costs of \$2,000.00. In all of the circumstances, order to go that Ms. Drummond pay to the defendants, costs of \$1,000.00. The said amount is payable forthwith out of the money in court.

Draft order or orders to be prepared and submitted to the registrar. Any requirement that Ms. Drummond approve any order/judgment is hereby dispensed with.

*Motion and cross-motion granted.*

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