

COURT OF APPEAL FOR ONTARIO

CITATION: Natario v. RBC Insurance Company of Canada, 2026 ONCA 482

DATE: 20260630

DOCKET: COA-25-CV-1680

Roberts, Coroza and Sossin JJ.A.

BETWEEN

Maria Natario

Plaintiff (Respondent)

And

RBC Insurance Company of Canada, Aviva Insurance Company of
Canada, Kevin David Sherkin, and John Doe(s)

Defendants (Appellants)

David Zarek and Alexander Reyes, for the appellants

P. Michael Rotondo and David Kapanadze, for the respondent

Heard and rendered orally: June 29, 2026

On appeal from the order of Justice Clyde Smith of the Superior Court of Justice,
dated December 10, 2025, with reasons at 2025 ONSC 6921.

REASONS FOR DECISION

[1] This appeal arises out of an application under s. 132(1) of the *Insurance Act*, R.S.O. 1990, c. I.8, pursuant to the consent order dated October 13, 2021 by Edwards R.S.J. (as he then was) that permitted the respondent to claim indemnity from the appellant insurers in relation to her judgment against the

appellants' insureds. The respondent was catastrophically injured as a result of a fall through a floorboard in the insureds' house.

[2] The appellants appeal from the motion judge's dismissal of their motion to amend their amended statement of defence. They had pleaded that the insureds had lied about how the respondent was injured in their home, saying that she fell down the stairs and not through the floorboard and that their lies caused losses to the appellants. They sought to plead that this conduct constituted civil fraud. They argue that the motion judge made several reversible errors.

[3] Their main contention is that the motion judge determined that the defence of civil fraud was never legally available in response to a s. 132(1) application under the *Insurance Act*. We do not read his reasons to say that and given the motion judge's conclusion of non-compensable prejudice, it is not necessary for us to resolve that issue in this case.

[4] We are not persuaded that the appellants are prejudiced by not being able to expressly characterize the insureds' conduct here as constituting civil fraud. The pleading in the defence as it now stands allows the appellants to adequately defend the respondent's claim for indemnity as well as her request for relief from forfeiture based on the pleading of the insureds' lies. In that respect, we agree with the motion judge's conclusion that the amendment was irrelevant in the circumstances of this case.

[5] The motion judge declined to allow the amendment based on his discretionary finding that there was non-compensable prejudice. He summarized his reasoning in para. 27 as follows: “In my view, given the history of this matter and the circumstances described above, including the non-compensable prejudice to the plaintiff, to allow what amounts to an irrelevant amendment on the eve of trial would amount to an injustice to the plaintiff.”

[6] As rule 26.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, provides, an amendment shall be allowed at any stage of the proceeding, on such terms as are just, except where there is non-compensable prejudice. We see no reversible error in the motion judge’s conclusion that there was non-compensable prejudice to the respondent. We see no basis to interfere with his conclusion that was open to him to make.

[7] The appeal is dismissed.

[8] As agreed, the respondent is entitled to costs in the all-inclusive amount of \$15,000 from the appellants.

“L.B. Roberts J.A.”
“S. Coroza J.A.”
“L. Sossin J.A.”